

**District: Chattogram.**

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

**Present:  
Mr. Justice Syed Md. Ziaul Karim  
And  
Mr. Justice K.M. Emrul Kayesh**

**Criminal Appeal No. 8856 of 2020**

Md. Abbas  
..... Convict-appellant.  
Versus  
The State  
..... Respondent.  
Mr. Md. Kamrul Islam, Advocate  
..... For the Convict-appellant.

with

**Criminal Appeal No. 2197 of 2021.**

Md. Jahangir Alam @ Korom Ali and another  
..... Convict-appellants.  
Versus  
The State  
..... Respondent.  
Mr. Md. Aminul Islam, Advocate and  
Md. Shahin Mia, Advocate  
..... For the Convict-appellant.

with

**Criminal Appeal No. 9682 of 2022.**

Md. Shahjalal @ Jalal  
..... Convict-appellants.  
Versus  
The State  
..... Respondent.  
Mr. Md. Ruhul Amin, Advocate  
..... For the Convict-appellant.

with

**Criminal Appeal No. 11068 of 2022.**

Md. Murad Hossain

..... Convict-appellants.

Versus

The State

..... Respondent.

Mrs. Hamida Chowdhury, Advocate and  
Mr. Nabid Nur, Advocate

..... For the Convict-appellant.

Mr. Mohammad Monirul Islam, Deputy-Attorney-General  
with  
Mr. Robiul Islam, Assistant-Attorney-General,  
Ms. Ayesha Flora, Assistant-Attorney-General and  
Mr. Md. Jahir Ahmed, Assistant-Attorney-General  
Ms. Belgish Nafisa Hoque, Assistant-Attorney-General  
..... For the State-respondent.

**Heard on: 08.11.2023, 09.11.2023,  
15.11.2023, 16.11.2023**  
and  
**Judgment on: 21.11.2023.**

**K. M. EMRUL KAYESH, J:**

(1) This criminal appeals are directed against the judgment and order of conviction and sentence dated 02.11.2020 passed by the learned Additional Metropolitan Sessions Judge, 5<sup>th</sup> Court, Chattogram in Sessions Case No.156 of 2008 arising out of Khulshi Police Station Case No.03(3)2006 corresponding to G.R Case No.142 of 2006.

(2) All the above appellants and absconding convicts namely (1) Md. Monir Hossen son of Abdul Khaleque and (2) Md. Saiful Islam @ Saifullah son of

Abdus Sattar are convicted under section 395 of the Penal Code and each of them sentenced to rigorous imprisonment for 10(ten) years and also to pay a fine of Tk.10,000/-(ten thousand) in default to suffer simple imprisonment for one month more and further convicted the appellants and absconding convicts under section 397 of the Penal Code and also each of them sentenced to imprisonment for 7(seven) years. However, the convict accused Md. Monir Hossen son of Abdul Khaleque and Md. Saiful Islam @ Saifullah son of Abdus Sattar are still on the run.

(3) All the above appeals have been arisen out of common judgment these have been heard together and are being disposed of by a single judgment.

(4) The prosecution case as portrayed in the First information report (hereinafter referred to as FIR) and unfurled during the trial is that one Bashir Mohammad lodged a written First Information Report on 07.03.2006 with Khulshi Police Station alleging inter alia, that the informant and his friend Abul Hossen have been doing

iron scrub business for a long time. When Abul Hossen needed money, he sent his manager Sajib Barua to him (informant) on 07.03.2006. Both of them at about 11.30 am went to Pahartali Islamic Bank Ltd. to withdraw an amount of taka 4(four) lakh by a cheque from the account of his friend Mohammed Yunus. From there they came to Sonali Bank Ltd, Pahartali Branch CDA market by a rickshaw and withdrew an amount of taka 6(six) lakh from Abul Hossen's account. Thereafter he rented a CNG from in front of CDA market with Tk.10(ten) lakh stashing in a polythene bag in order to go to Pahartali Tigerpass road to deposit it of Abul Hossen's bank account. On arriving in front of Pahartali Railway School under Khulshi, Police Station at around 12.30 hours, the cashier Absar of Sonali Bank Ltd. of CDA Market branch, Chattogram called through mobile phone and asked him whether he had received more money or not. As he could not understand he told the driver to drive the CNG taxi slowly. Having got speed breakers on the road, the driver further slowed the speed. At the same time four unknown

armed persons, 3(three) of them were with firearms and one with a pistol got on their CNG and they beat him and took away his revolver bearing No.5980 loaded with 6(six) cartridges (.32) and his mobile phone from his pocket and also took away polythene bag, containing full of money from Sajib Barua. Then 4(four) accused got on another CNG and started going towards the city gate of Chattogram City. The robbers made their CNG was useless before leaving from the place of occurrence. At that time, he hired another CNG and was following the dacoits at one stage reached at city gate. He later went to Khulshi Police station and lodged a FIR with Khulshi Police Station. In the mean time the CNG carrying dacoits disappeared from his sight. Upon the aforesaid FIR Khulshi Police Station Case No. 03(3)2006 was started.

(5) After lodgment of the First Information Report the officer in charge of Khulshi Police Station entrusted to S.I Sumit Kumar Kundu for holding investigation of the case. Then the police submitted charge sheet being No.15 dated 05.02.2007 against 7 (seven) accused persons under

section 395, 397 and 412 of the Penal Code. However, the investigating officer prayed for discharge the accused Md. Amir Hossain from the prosecution. Thereafter the Chief Metropolitan Magistrate, Chattogram transferred the same to the learned Metropolitan Sessions Judge, Chattogram for trial and disposal, where it was registered as Metropolitan Sessions Case No.156 of 2008. whereafter it was transferred to the learned Druto Bichar Tribunal (hereinafter referred to as Tribunal) through a Memo dated 31.01.2008 in which it was further registered as Druto Bichar Tribunal Case No.32 of 2008. After receiving the record the tribunal framed charge against the accused persons under section 395, 397 and 412 of the Penal Code, which was read over and explained to the present accused persons to which they pleaded not guilty and claimed to be tried.

(6) In course of trial the prosecution examined as many as 6(six) witnesses before the tribunal. As the tribunal could not conclude the trial within the stipulated time, as a result the tribunal further transmitted the case

record to Additional Metropolitan Sessions Judge, 5<sup>th</sup> Court, Chattogram for trial. Then the prosecution further examined 5(five) witnesses.

(7) On conclusion of evidence of prosecution witnesses the accused Md. Abbas and Md. Shah Jalal @ Jalal were examined under section 342 of the Code of Criminal Procedure (hereinafter referred to as Code) when the trial court drew their attention to incriminating evidences appearing against them where they reiterated their innocence and claimed to be justice. The defence examined none.

(8) The defence case as it transpires from the trend of cross-examination of the prosecution witnesses on behalf of the accused persons that they were not present in the place of occurrence, they did not carry any pistol or firearms and the offence of dacoity as alleged was not committed in the place of occurrence. The confessional statement was extracted by applying force and tortures the alleged incriminated articles i.e the money was not recovered from the possession of Jahangir Alam and other

accused persons. It further divulged in defence that the convict appellants have been implicated out of local rivalry and enmity.

(9) After conclusion of trial the learned court below arrived at a decision and convicted the appellants under section 395 and 397 of the Penal Code and sentenced them aforesaid holding:

(a) The prosecution successfully proved the charge against the convict appellants as well as the absconding convicts by adducing corroborative evidence.

(b) The evidence as adduced against the convict appellants and absconding convicts were consistence uniform, trustworthy and corroborative in nature.

(10) Feeling aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence the appellants approached the instant appeal before this court.



(11) Mr. Mohammad Monirul Islam, Deputy-Attorney-General assisted by Mr. Robiul Islam, Ms. Ayesha Flora and Mr. Md. Jahir Ahmed, Ms. Belgish Nafisa Hoque, Assistant-Attorney-Generals appearing for the state submitted drawing our attention to the First Information Report, charge-sheet, evidence on record and the judgment in question and strenuously opposes the appeal. He further submits that the prosecution successfully proved the charge against the appellants and absconding convict beyond reasonable doubt. He next contends that all the evidence of the prosecution witnesses are consistent with each other in respect of complicity of the appellants in the commission of offence. He further submits pointing at the evidence of P.W-4 as to how the accused persons committed an offence of dacoity and by his evidence connected them with the offence. He further submits that the appellants committed an offence of dacoity on the basis of secret information that the informant was carrying cash Tk.10 (ten lakh) withdrawing

from bank. He lastly submits to uphold the Judgment and sentence awarded by the learned trial court.

(12) On the other hand the learned advocates for the appellants have assailed the Judgment in question on the following grounds:

Firstly: The learned court below arrived at a wrong decision without considering the evidence on record and thereby the impugned judgment is not sustainable in law.

Secondly: The Judgment in question is not well founded by the evidences of the prosecution as such the same is not countenance in law.

Thirdly: The impugned Judgment is based on conjecture and surmises and as such the same cannot stand in Law.

(13) On the other hand Mr. Md. Kamrul Islam, the learned advocates for all the appellants have sought for impeachment of the impugned judgment submitting that the FIR and the confessional statement of the accused Monir and the deposition of the informant and the deposition of another eye witness of p.w-8 are not

consistent and corroborative in nature. No amount was recovered from the possession of the convict appellant Jahangir Alam because 10 (ten lakh) taka had been snatched away from the possession of the informant and Sajib Barua. But only taka 3,22,500/-(three lakh twenty two thousand five hundred) and 6(six) round bullets were recovered from the possession of the accused Jahangir which was not seized in connection of this case. Some amounts one Mobile Phone set, and two pieces of iron rod, were seized as produced by Nurul Alam and Tk.8,00/- (eight hundred) was seized at the pointing of the accused Murad and one CNG run auto rickshaw bearing No. Chatto Metro-৩-11-2446 was seized near a Post Office of Sadarghat in Chattogram. He further submits testimony of prosecution witnesses are not consistent with each other. Rather the learned court below convicted the appellants including the absconding convicts are based on conjectures and surmises. He next submits that the learned court below arrived at a wrong decision without considering the evidences on record in its true perspective.

He further submits praying for acquittal of the convict appellants from the charge leveled brought against them setting aside the impugned Judgment.

(14) To appreciate the submissions led by the learned advocates for both the parties and other documents all the evidences produced by the prosecution are mentioned below:

(15) P.W-1 Constable Abul Kalam, stated in his deposition that in the year 2007, he was working as constable in Boro Aulia police outpost under Sitakunda Police Station in Chattogram. While he arrived at the Sikko filing station on the south side of Bhatiari Bazar at 13.30 hours on that date Habildar Noor Mohammad was in charge of the Highway Patrol Police. At that time he saw a man trying to get on a CNG taxi entering into an altercation with the driver of CNG. He further stated that he saw some people were chasing him terming him as thief. Thereafter a man was arrested by him and on search found a bag with him then they recovered a pistol a revolver a cut gun, a shotgun, pistol and a cleaver and an

amount of Tk.3,22,500/- (three lakh twenty two thousand five hundred) then arrested person disclosed his name as Jahangir Alam. The arrested person further disclosed that he was carrying money and a pistol which was snatched away from a rail crossing of Tigerpass Road in Pahartoli. Then S.I Zafar of Sitakunda Police Station came to the spot and sized alamats by preparing a seizure list. The witness identified the accused Md. Jahangir Alam on dock.

(16) In cross-examination he denied a suggestion that the accused Jahangir was coming to Chattogram city from his father-in-law's house under Sitakunda Police Station by a city service and on the way the bus was broken down and the police searched the bus and found something in the bunker and the police arrested Jahangir and another 4 to 5 persons from the bus and took them to Sitakunda Police Station. He further denied a suggestion that no scuffling was made between baby taxi driver and accused Jahangir. He denied a suggestion that a pistol, revolver or a shotgun and taka 3,22,500/- (three lakh

twenty two thousand five hundred) were not recovered from the possession of Jahangir.

(17) P.W-2 Ms. Tahera Ferdous, stated that she was working as Magistrate under Chattogram development authority. She recorded the confessional statement of the accused Md. Murad Hossain under section 164 of the Code. On that date S.I Sumit Kumar Kundu of Khulshi Police Station produced the accused Md. Murad Hossain before her at 14.30 hours to record his confessional statement under section 164 of the Code. She allowed the accused for reflection of time in her chamber in the custody of her peon. While she explained him to consequence of the confessional statement, whereupon he agreed to make confessional statement.

The confessional statement of the accused Md. Murad Hossain dated 13.03.2006 as ext-1 series, is reproduced as follows:

“ আমি দীর্ঘ ৪/৫ বৎসর পূর্বে গার্মেন্টসে চাকুরী করতাম তখন হতে জাহাঙ্গীরের সাথে আমার পরিচয় হয়। তার পরবর্তীতে জাহাঙ্গীর গার্মেন্টসে জুটের ব্যবসায় চলে যায়। আমি ড্রাইভিং লাইনে চলে আসি। তারপর থেকে জাহাঙ্গীর মাঝে মাঝে আমার বাসায় বেড়াতে আসত এবং আমিও তার বাসায় বেড়াতে যেতাম। গত ০২ মাস আগে

জাহাঙ্গীরের মামা শিপন এবং শিপনের বন্ধু ও জাহাঙ্গীরের বন্ধুদের সাথে আমার পরিচয় হয়। তারপর একদিন জাহাঙ্গীর আমাকে বলে যে, মুরাদ তোমার তো গাড়ী আছে আমরা তোমার গাড়ীতে করে ঘুরব, গার্মেন্টসের মালটাল কিনব। তারপর থেকে জাহাঙ্গীর প্রায় আমার গাড়ীতে ঘুরত ২/৩ ঘন্টা এবং আমাকে ৪০০/৫০০ টাকা ভাড়াবাবদ দিত। গত ০৬/০৩/২০০৬ইং তারিখ বিকাল আনুমানিক ৬.০০/৬.৩০ ঘটিকার সময় জাহাঙ্গীর আমার বাসায় আসে এবং আমায় বলে যে, তুমি আজ গাড়ী চালাওনি? আমি বললাম কেন আমি আজ গাড়ী চালাইনি। বাসায়ই আছি। তখন সে বলল যে, কালকে গাড়ী চালালে আমার একটি ডিউটি আছে মর্মে জানায়। তারপর সে আমাকে তার পরের দিন সকাল ৯.০০ ঘটিকার সময় অলংকার সিনেমা হলের মোড়ে গাড়ী চালাই বা না চালাই আসতে বলেন। সে আমাকে বলে যে, তার গাড়ী আছে দুটি। আমি গাড়ী না চালালেও যেন অলংকার সিনেমা হলের মোড়ে যাই। আমি তার কথায় সম্মত হইয়া কথামত ০৭.০৩.২০০৬ইং সকাল ৯.০০ ঘটিকার সময় আমি অলংকার সিনেমা হলের মোড় পৌছাই। প্রথমে সেখানে গিয়ে দেখি একটি কালো ব্যাগ হাতে জাহাঙ্গীর আসে। তারপর জাহাঙ্গীর সহ আমি অলংকার মোড়স্থ সিটি কর্পোরেশনের মার্কেটের সামনে আসি। পেছনে পেছনে দেখলাম শিপন, জালাল, আমীর আসল। সিটি কর্পোরেশনের সামনে সাইফুল দাঁড়িয়ে আছে। তাদের একজন সি.এন.জি গাড়ী চালক মনির সি.এন.জি নিয়ে মার্কেটের বিপরীত দিকে গাছের নীচে বসে আছে। আমি জাহাঙ্গীরের সাথে মনিরের সামনে গেলাম। সেখানে দাঁড়ানোর পর দেখি অন্যরা এদিক সেদিক হাটাহাটি করছে। হঠাৎ করে দেখি একটা মোবাইল কল আসে সাইফুলের হাতে। সাইফুল সবাইকে দ্রুত গাড়ীতে উঠার জন্য বলে। পিছন থেকে কালাম অথবা আলমগীর ঐখানে আর একটি সি.এন.জি নিয়ে আসে তাদেরকে আমি দেখলে চিনব। আমি দুটি গাড়ীর মধ্যে অপরিচিত গাড়ীর ড্রাইভারের গাড়ীতে উঠি। পিছনের সিটে সাইফুল এবং বাদশা বসা ছিল। আমি সামনে বসা ছিলাম ড্রাইভারের পার্শ্বে তখন সাইফুল আমাকে দ্রুত গাড়ী চালাতে বলে। তখন আমি গাড়ীটি দ্রুত

চালিয়ে পাহাড়তলী লাকি হোটেলের মোড়ে যাই। তখন আমাকে বামে যেতে সাইফুল বলে। বামে গেলে সাইফুল তখন আমাকে আমার সামনের সি.এন.জি গাড়ীকে অনুসরণ করে পিছনে পিছনে যেতে বলে। আমি পিছন পিছন যেতে লাগলাম। তারপর রেল স্কুলের সামনে বিপরীতে রেলওয়ে ক্লাবের সামনে আমার আগের সি.এস.জি গাড়ীটি থামল। আমি গাড়ীটি (আমার) থামাতে চাইলে সাইফুল আমাকে ওভারটেক করতে বলে এবং জালালের কাছে মোবাইল করে বলে যে, রেল স্কুলের সামনে গাড়ীটি আছে তোমরা তাড়াতাড়ি কাজ সেরে ফেল। তারপর সাইফুল আমাকে বলে যে, তুমি কিছু দূর সামনে গিয়ে গাড়ীটি ঘুড়িয়ে আন। আমি গাড়ীটি ঘুরিয়ে এনে ঘটনাস্থলে দেখি শিপন, জালাল, বাদশা, আমীর, জাহাঙ্গীর দ্রুত চট্ট মেট্রো-ত-১১-২৪৪৬ নং গাড়ীটিতে একটি অস্ত্র এবং একটি প্লাস্টিকের ব্যাগ সহ উঠে। সাইফুল ও তাহার সহযোগী কালাম ওরফে আলমগীর ওরা আমার গাড়ী থেকে নেমে পড়ে আমার সাথে অপরিচিত ড্রাইভার এবং আমি গাড়ীটি চালাচ্ছিলাম। সাইফুল আমাকে ২৪৪৬ নং গাড়ীটি পিছনে পিছনে যেতে বলেন। চট্ট মেট্রো-ত-১১২৪৪৬ নং গাড়ীটি মনির চালাচ্ছিল। অপরিচিত ড্রাইভারের নাম আব্দুল অথবা বাদশা হবে। আমি গাড়ী নিয়ে যেতেই পাহাড়তলী পুলিশ বীটের ডানে পুলের কাছে সামনের গাড়ী থেকে বাদশা এবং ওরফে আমীর নেমে আমার গাড়ীতে উঠে বসে। আমি সেখান থেকে জাকির হোসেন রোডে আসি। সেখান থেকে চলে যাই এ.কে খান মোড়। সেখান হতে সিটি গেইট পার হলাম। সেখান হতে ভাটিয়ারীর দিকে যেতে লাগলাম। সেখানে গিয়ে গাড়ী থামালে ২৪৪৬ নং গাড়ী হতে জাহাঙ্গীর দ্রুত নেমে পড়ে, তার হাতে কালো একটি ব্যাগ ছিল। সে ব্যাগটি নিয়ে সিটি সার্ভিসে উঠল এবং উঠার আগে আমাকে বলে যে, মুরাদ তুমি চলে যাও কালকে আমি তোমার সাথে দেখা করব। সেখান থেকে ওরফে আব্দুল ওরফে বাদশা গাড়ীটি ঘুরিয়ে নিয়ে আমরা আবার শহরের দিকে চলে আসি। আমি এবং অপরিচিত ড্রাইভার বায়েজিদ রোডের স্টারশীপের সামনে আমাকে দ্রুত নামিয়ে ওরফে আব্দুল ওরফে বাদশা আমাকে একটি ১০০ টকার বান্ডিল ১০,০০০/- (দশ হাজার) টাকা দিল।



তারপর আমি ১০,০০০/- (দশ হাজার) টাকা পেয়ে খুশিতে মাতোয়ার হয়ে বাসায় ফিরলাম। বাসায় ফিরে খুব ভালো কাপড় চোপড়, আসবাবপত্র কিছু কিনলাম। ২য় দিন পর জাহাঙ্গীর আসার কথা থাকলেও সে আসল না। ৩য় দিন রাত ১১.৩০ ঘটিকার সময় পুলিশ আমার বাড়ী রেইড দিয়ে আমাকে ধরে খুলশী থানায় নিয়ে যায়। খুলশী থানায় নিয়ে আমাকে জিজ্ঞাসাবাদ করলে আমি ঘটনার সব কিছু পুলিশের কাছে বলি। তারপরের দিন সকালে আমাকে নিয়ে আমার সেগুর বাগান চার নম্বর লেইন নালার পাড়ে মুন্নার বাসায় সেখানে আমার স্ত্রী ছিল সেখানে রেইড দিয়ে পুলিশ ৮০০/- (আটশত) টাকা উদ্ধার করে। এই আমার জবানবন্দী।”

(18) Thereafter she recorded his confessional statement observing all legal formalities as provided under section 164 and 364 of the Code. She proved the confessional statement and her signatures thereon. Which has been marked as ext- 1 series.

(19) She denied a suggestion that the accused was beaten and forced to make confession. She denied a suggestion that the confessional statement was not made by the accused voluntarily.

(20) P.W-3 Constable Siraj Uddin, was tendered by the state accused declined to cross-examination.

(21) P.W-4, Bashir Mohammed as informant stated in his examination-in-chief that informant and his friend Abul Hossen have been doing iron scrub business for a

long time. When Abul Hossen needed money on 07.03.2006, he sent his manager Sajib Barua to him for Tk.10 lakh. He along with the manager Shajib Barua went to Pahartali Islami Bank Ltd and withdrew money for four lakhs by a cheque from the account of his friend Mohammad Yunus. From there they came to the Sonali Bank Ltd CDA Market Pahartali branch by a rickshaw and withdrew Tk.6 lakhs from Abdul Halim's account. Then he rented a CNG from in front of CDA Market with the money of Tk.10 lakh having in a polythene bag to go to Pahartali Tigerpass Road to deposit it of Abul Hossen's bank account. When they arrived in front of Pahartali Railway School under Khulshi Police Station at around 12.30 p.m, the cashier Absar of Sonali Bank of CDA Market called him and asked whether he had received more money or not. As he could not follow he told the driver to drive CNG slowly. Having got speed breakers on the road, the driver further slow the speed. At that time, 4 unknown persons from both sides of the CNG got into it, three of them were with firearms and one with a knife of

them one (wearing white ganji in the dock) pointed pistol at his (P.W-4) head and beat him and that person took away his revolver and mobile phone from his pocket and gave those to another one (wearing black shirt in the dock) and also handed over the polythene bag full of money from accused Sajib Barua to another person. Then 4 accused persons got into a CNG and started going towards the city gate. The dacoits made their CNG wire useless. At that time, he (P.W-4) hired another CNG and was following dacoits and lastly reached the city gate. As the CNG and dacoits disappeared from his sight then he (P.W-4) went to Khulshi Police Station and lodged an ejhar.

P.W-4 proved his ejhar and his signatuer thereon as Ext.2, 2/ka.

P.W-4 further deposed that about 4.30/5.00 p.m. he got information from Khulsi Thana that an accused was arrested by Baro Aolia Police fari under Sitakundo Police Station with money and arms. Then he reached Khulshi Police Station and then went to the Baro Aolia Police fari

along with the O.C and other police force indentified the accused and his revolver with 6 rounds of cartridges and Tk.3,22,500/-, which were recovered from that accused. The arrested accused said his name as Jahangir.

P.W-4 indentified the accused Jahangir in the dock and said that he carried pistol. P.W-4 also indentified accused Monir Hossen, and said that he carried a knife like chapatti and also indentified the accused Shahjalal @ Jalal in the dock and said that he carried a cut rifle, P.W-4 also indentified accused Saiful and said that he carried revolver like arms at the time of occurrence. He also indentified accused Murad Hossain and said that this accused came to the place of occurrence by a CNG immediate after the incident and asked what happened.

In cross-examination on behalf of accused Saiful, stated that he did not mention the name of any accused in the ejhar or what was in the possession of any accused. There was no TI parade held in the case. The Railway School is situated two and a half kilometers away from CDA Market's Sonali Bank Ltd. His house is on the north

side of CDA Market. He reached at CDA Market approximately 12.30 hours. He left CDA Market, Sonali Bank branch at about 12.20 p.m. No one from the Railway School came to the spot at the time of the incident. Post office is west of the place of occurrence. It was not known to him whether anyone of the post office came there or not. Shahi Community Center is to the north of the post office. It was not known to him whether any one of community center came or not. There are 3 or 4 shops 100 yards away from the place of occurrence. It was not known to him whether anyone of those shops came or not. Moments before the incident, Sonali Bank's cashier Absar called his mobile phone and he was talking with the mobile phone keeping the revolver in his pocket and the occurrence happened at that moment. As a result, he did not get a chance to use the revolver. The name of the cashier of Sonali Bank Ltd. has been mentioned in the ejahar. He did not mention his name as a witness or an accused. At that moment, the accused persons got into a taxi and left for the city gate. He did not know the taxi

driver. He first saw the accused Saiful on the spot, as he did not know him from before. He did not know whether any alamat was recovered from the accused or not.

(22) He denied a suggestions that the accused Saiful was not at the spot or did not have a pistol or no dacoity was happened at the place of occurrence at the said time or that accused Saiful did not commit the alleged dacoity.

(23) In his cross examination he stated that he did not mention in the ejahar that after the incident, a person came to the spot with CNG and asked what had happened.

(24) In his cross examination on behalf of the accused Murad Hossen stated that he did not mention in his ejahar that Murad Hossen had a knife like chapatti in his hand. This witness denied the suggestions that Murad Hossen did not have alleged a knife and he has given a false evidence against the accused.

(25) In his cross examination on behalf of the accused Jahangir denied the suggestion that the accused Jahangir was not in front of Pahartali Railway High School or he did not snatch the revolver, mobile and

money bag with pointing at a weapon on his head or later he (p.w-4) did not go to Sitakunda Police outpost as per instruction of the officer in charge of Khulshi Police Station and did not identify the accused Jahangir or saw the revolver and said that Jahangir was not involved in the incident but at the instruction of the officer in charge Jahangir's name was mentioned as the accused.

(26) The witness denied the suggestions that Shahjalal was not at the place and time of the alleged incident or did not take part in the dacoity as alleged.

(27) P.W-5 Dawood Sheikh and P.W-6 Md. Sadequr Rahman, were tendered and cross-examination was also declined.

(28) P.W-7 Mohammad Alauddin Mia, testified that on 21.03.2006 he was on sira-mobile duty at the Police Station of Khulshi and at night he went to Police Station around 10.15 hours and then S.I Sumit Kumar Kundu got on a car with one of the accused. He took the accused to Dhanyalapara Police Station. The accused went to roof of a bathroom in his father-in-law's house and got up to

unload goods. But he tried to commit suicide by cutting his throat with a piece of glass. He was taken to hospital and got treatment. Thereafter he came to know the accused died. The name of the accused was Abul Hossen.

(29) The cross-examination of P.W-7 of all the accused were declined.

(30) P.W-8 Shajib Barua, another eye witness to the occurrence testified that on 07.06.2006 he was his business office at Jahangir Market in Kadamtali. His owner Abul Hossen told him to go to Mr. Bashir at Sonali Bank Ltd. of Pahartali CDA market and further told that Mr. Bashir would pay him Tk.10,00,000 (ten lakh) and to deposit it in IFIC Bank Ltd. at Sheikh Mujib Road branch. According to him, he reached to CDA market at 11.15 am, came there within 10 to 15 minutes after his arrival, Mr. Bashir came with a rickshaw and took him to Islami Bank Ltd. of Alangkar mor and took taka 4(four lakh) from there. Mr. Bashir again took him at CDA Market Sonali Bank Ltd. branch. Thereafter he withdrew an amount of Tk.6 (six lakh) from there. Then he rented a baby taxi



stashing money in a polythene bag and left for IFIC Bank, Sheikh Mojib Road. While the baby taxi went a little ahead before Pahartali at Railway School, Bashir Saheb received a mobile phone call when he asked the driver to drive CNG slowly as he could not understand the phone call. At that time four miscreants surrounded their baby taxi as the driver slowed down and there is a speed breaker in front of the Railway School. There were two men sat beside him. One of them held a rifle at his head. Mr. Bashir was also surrounded by two men. A man held a firearm at the driver's head. A criminal snatched the money containing bag away and gave it to another criminal. The miscreant took a mobile phone and pistol from Mr. Bashir. The miscreants slapped them. The accused persons then fled away later they got on another CNG and they continued to chase the accused persons towards Pahartali market. Going to the Alanker mor, they got down from taxi without seeing anybody else. He informed about incident to his owner through a phone. He left the said place for his office and told his boss.

Thereafter Mr. Bashir lodged a First Information Report with Khulshi Police Station. The witness identified the four miscreants standing on dock.

(31) He denied a suggestion that no occurrence took place as alleged by the prosecution. He denied a suggestion that 10,000,00/-(ten lakh) taka was not snatched away by the miscreants. He denied a suggestion that 10,00,000/-(ten lakh) taka was not withdrawn from the bank. He denied a suggestion that the accused persons have been falsely implicated with this case but he admitted no TI parade was held in connection of this case. He denied a suggestion that he along with the informant misappropriated the money by cooking up a story of an offence of robbery. He denied a suggestion that no arms were recovered from the possession of the informant.

(32) P.W-9 S.I Sumit Kumar Kundu, is an investigating officer. He stated in his deposition that on 07.03.2006 he was working at Khulshi Police Station under Chattogram Metropolitan Police. One Bashir Mohammad, lodged First Information Report with

Khulshi Police Station. After lodging First Information Report he was entrusted to hold investigation of the case. Having taken the charge of investigation visited the place of occurrence and prepared sketch map with index. He proved the sketch map, index and his signature thereof which has been marked an ext. 3, 3/1, 4, 4/1. He further stated that he seized alamats were taken into possession by preparing two more seizure list at different times related to the incident in this case. He proved seizure list and his signature thereon marked as ext. 5 series and seized alamats as material exhibit I, II. Which was then gave Jimma of CNG auto rickshaw as per direction of the court and he proved the Jimmanama which has been marked as ext. and marked as ext.- 6. Weapons and cash money was recovered in connection of Sitakunda Police Station Case No.06 dated 07.03.2006 under section 19A of the Arms Act and by initiating general diary No.376 of Sitakunda Police Station was seized but the incriminating alamats were recovered in connection of Sitakunda Police Station Case No.06 dated 07.03.2006 has been treated as

seized in connection of this case. Thereafter the accused Murad Hossain made a confessional statement under section 164 of the Code as per his confessional statement he recovered some money amounting to Tk.800/-(eight hundred) out of his share Tk.10,000/-(ten thousand) on 10.03.2006 was recovered and seized by preparing a seizure list and a CNG was recovered which was being used at the time of commission of offence of dacoity on 12.03.2006. Then the investigating officer having found prima-facie case submitted charge sheet against the accused persons under section 395, 397 and 412 of the Penal Code.

(33) He admitted in his cross-examination that no TI parade was held in connection of this case. He further admitted that Jahangir Alam was arrested at Sitakunda Police Station area. Thereafter the informant went there and seized the CNG run auto rickshaw as identified by the accused Jahangir in front of Sadarghat Post Office under Kotwali Police Station. He admitted that during his investigation he did not collect any material from the

concerned bank for amount of withdrawal of money as the amount mentioned in the First Information report. He further admitted he did not check the call list of both the mobile phones whether the cashier of Sonali Bank Ltd CDA Market branch called the informant or not. He denied a suggestion that no evidence was coming against the accused persons in spite of that they have been falsely implicated by him.

(34) He further admitted that Nokia Mobile Phone and a piece of iron and a piece of wood having 5 inches long and a curved iron rod was recovered as the production of one Nurul Alam. He admitted that a separate case has been started against the Jahangir Alam regarding the recovery of money and firearms from his possession under Sitakundu Police Station.

(35) He admitted in his cross-examination that the alamat was recovered in front of Railway School as produced by one Nurul Alam. He further admitted no alamat was recovered from the possession of the accused in connection of the case rather most of the alamat were

recovered in connection with Sitakunda Police Station Case No. 06 on 07.03.2006. He denied a suggestion that the accused Saiful is not same person of the accused Md. Saiful Islam. He denied a suggestion that confessional statement was obtained by placing accused Murad on remand and forced him to give a false confessional statement. He denied a suggestion that the accused Mohammad Shahjalal has been falsely implicated in this case despite of the fact that no alamots have been recovered from him and no evidence have been found against him.

(36) P.W-10 Biswajit Pal, testified that he has owner of a side shop in front of Sadarghat Post Office under Kotwali Police Station. He used to work from 6.00 in the morning to twelve at night. Seeing a few people at the time of the incident he went there. Then police asked him to sign on a paper and he signed it only. He proved his signature on the seizure list but during his cross-examination he stated that he did not know the accused and he did not see anything recovered from them.

(37) P.W-11 Mohammad Shamim, is also the seizure list witness. He stated that on 07.03.2006 many people gathered in front of Pahartali Railway School from 11.30 a.m. to 12.00 hours. He inquired and found that there was an offence of dacoity committed in front of the Railway School. Police collected his name and address and took a signature on a paper. He proved his signature on the seizure list as ext. 5(kha)/2.

(38) In cross-examination he stated that he did not see the accused even he did not see the alams allegedly recovered from the possession of the accused Jahangir Alam. He denied a suggestion that he put his signature on the seizure list having seen all the materials recovered from the accused person.

(39) This is in all the evidences as produced by the prosecution. As all the points have taken together for the sake of convenience and discussions.

(40) We have heard the submissions of the learned Advocates for the convict-appellants and perused all

relevant papers submitted with the record to appreciate the submission of the learned Advocates for both the parties.

At the outset the learned Advocates for the convict-appellants the confessional statement was recorded by the Magistrate of the accused Md. Murad Hossain which is not consistent with the averment of the First Information Report and the convict appellants are not the FIR named accused for which we have gone through the confessional statement and also the First Information Report. It appears from the deposition of P.W-4 informant stated that 10,00,000/-(ten lakh) taka was withdrawn from two banks and were going to deposit it to another bank that is IFIC Bank, Mujib Road Branch, Chattogram. On their way to go to deposit the same some unknown accused persons snatched away the said money at gun point. It appears further from the First Information Report that the informant did not mention the name of the accused in the First Information Report, that if he would have seen the accused persons they would identify them. Moreover no TI parade was held and the confessional statement of Md.



Murad Hossain gave an account of the incident of commission of dacoity. But his confessional statement is not consistent with the averment of the First Information Report. It further appears from the plain reading of confessional statement he was going to the place of occurrence at the request of another convict accused Jahangir Alam. But the accused Jahangir did not inform him about the commission of offence of dacoity. He further admitted in his confessional statement he got an amount of taka 10,000/-(ten thousand) but as alleged in the First Information Report 10,00,000/-(ten lakh) taka was snatched away from the place of occurrence only 800/-(eight hundred) taka was recovered from at the showing of confessional statement maker accused. There is no identification mark of money even 10,000/-(ten thousand) taka was not recovered from the possession of the accused Murad Hossain only 800/-(eight hundred) taka was recovered from the possession of his wife. Because no identification mark was put on the money that is 8,00/-(eight hundred) taka recovered from his wife.

P.W-4 and 8 are the eye witness of the incident but P.W-8 stated in his deposition in court, he identified the accused on dock P.W-8 did not file an application before the concerned authority to hold TI parade. But after laps of time he identified the accused on dock during trial of the court which is caused suspicion upon the identification of the accused by PW-8 in court. Moreover 3,22,500/-(three lakh twenty two thousand five hundred) taka was recovered from the possession of the accused Jahangir which was seized in connection of a case filed by S.I Sumit Kumar Kundu of Sitakunda Police Station but the money has not produced in connection of this case before the court. So the money was recovered from the possession of the accused Jahangir Alam which was not seized in connection of this case. P.W-9 investigating officer has clearly stated that the money along with pistol, a revolver and a cut rifle and other incriminating articles are not seized in connection of this case. Moreover the money amounting to taka 3,22,500/-(three lakh twenty two thousand five hundred) was the money of robbery

which is not established by adducing evidence on the part of the prosecution. The confessional statement which does not involve convict persons. It further appears from the record some articles have been recovered from the place of occurrence as produced by Nurul Alam which was not produced as pointing out by the any convict appellant and some incriminating articles that is two pieces of iron rod one mobile set and other incrementing articles seized in connection of this case. (Ext-5)

But P.W-4 is informant of this case he did not support the recovery of incriminating articles because the incriminating articles were not produced by any of the accused persons. One Nurul Alam produced the incriminating articles to the investigating officer who has not examined in court as witness even he did not include as accused of this case also.

(41) It further appears from the evidence on record CNG run auto rickshaw bearing No. Metro-৩-11-2446 was seized in front of a Post Office under Sadarghat in Chattogram but the CNG run auto rickshaw was then

given Jimma to its owner but the investigating officer has not confirmed from the owner of the CNG who was the driver of his CNG run auto rickshaw. But accused Abbas has been arrested terming him as the driver of the CNG auto rickshaw. The investigating officer failed to ascertain whether the accused Abbas was the driver of the CNG run auto rickshaw or not. It further appears from the charge sheet that the accused Abbas has been arrested in connection of this case mentioning him as driver of a CNG auto rickshaw which has not proved by giving evidence of the prosecution witnesses. Confessional statement maker accused Murad Hossain clearly stated that he got 10,000/-(ten thousand) taka from the money robbed away but only 8,00/-(eight hundred) taka was recovered from the possession of his wife without asserting that the money was taken away by the convict appellant from the informant and P.W-8. Accused Murad Hossain has been implicated in connection of this case only Tk.8,00/-(eight hundred) was recovered from the

possession of his wife at the showing of accused Murad Hossain.

(42) It further appears from the evidence of investigating officer some firearms were recovered from the possession of the accused Jahangir while he was arrested under Sitakunda Police Station area. Thereafter P.W-4 identified his firearms recovered from the possession of accused Jahangir Alam. But the investigating officer has not produced the license of the firearms belongs to the informant. Only P.W-4 stated that the firearms snatched away from the place of occurrence which was recovered from the possession of the accused Jahangir. Even the firearms were not seized in connection of this case but the accused Jahangir Alam has been arrested for keeping some money and firearms recovered from his possession without ascertaining that the arms belongs to the informant P.W-4 and the money was not ascertained that the money was robbed money which was taken away from the possession of the P.W-4 and P.W-8. Even the informant has not given any sorts of description

regarding the contour of the accused person in the First Information Report, P.Ws-4 and 8 identified the accused on dock without giving any description of the convict appellants in the First Information Report. Moreover a belated identification of the accused on dock which makes the case doubtful. In this context We may refer a case

Shahadat Hossain and  
others....Appellant

–Vs–

The State..... Respondent  
reported in 39 DLR (1987)

at page 72, wherein your

lordship observed as under:

**Delay in holding T.I.P  
destroys its trustworthiness.**

“There is no doubt that delay in holding the T.I. parade reduces the value of such identification. Reference may be made to the case of Hazara and others vs. Empire reported in AIR 1947 Patna Page 157, wherein it has been held that a T.I Parade held after 5 months of the occurrence was held after inordinate delay.”

(43) Where in your lordships clearly observed as that the identification T.I parade was not held before commencement of trial i.e. pretrial stage of this case and

during the trial the informant and p.w-8 identified the accused on dock which makes the case doubtful.

(44) Whereupon, we have perused the confessional statement made by the accused Murad Hossain, Which is exculpatory in nature. Because he repeatedly stated that he did not take part in the commission of offence of dacoity. The learned Magistrate as P.W-2 clearly stated in her deposition that the accused was giving time for further reflection to think over the matter, and further given caution as to result for making confessional statement, despite of that he made confessional statement. Thereafter P.W-2, the learned Magistrate being satisfied as to voluntariness of the confessional statement of the accused and then she was given memorandum in the foot of the confessional statement ext. 1 series. It further appears from the confessional statement form No. (M) 84. Wherein filled up columned number 5 to the form then the accused Murad Hossain made confessional statement. In this regard we find support of the decision

State .....Appellant

-Vs-

Babul Miah ....Respondent

reported in 63 DLR (AD)(2011)

10, whereupon your lordship

observed as under:

**Section164(3)**

“The provisions of subsection (3) of section 164 is mandatory and therefore he is required to fill up column 7 of the form for recording confession which is a column for recording a brief statement of the Magistrate’s reason for believing that the statement was voluntarily made.”

(45) So as per evidence of P.W-2 the confessional statement was voluntary made, we have gone through the evidence on record that none of the witnesses deposes in court supporting the confessional statement. So the confessional statement was not true. If the confession is voluntary but not true, when we have relied in a case

Moslemuddin and another  
....Appellants

-Vs-

State .....Respondents

reported in 48 DLR (1996) at page 588, wherein your lordship observed as under:

**Code of Criminal  
Procedure (V of 1898)  
Section 164**

“Before a confessional Statement is relied upon it must be found that it was not only voluntary but also true. Voluntariness and truth together make it worthy of acceptance.”



(46) Moreover the confessional statement of the accused Murad Hossain was exculpatory in nature. Over and above the evidence of other witness did not support the evidence of his confessional statement. But the learned court below convicted the accused relying upon uncorroborated confessional statement which is not save. We may refer a case

State .....Appellant

–Vs–

Delwar Hossain & 7 others

.....Condemned

prisoners

reported in 64DLR (2012) at page 356, wherein your lordship observed as under:

**Evidence Act (I of 1872)**

**Section 3 and 30**

“Confessional statement of co-accused- Its value- The confessional statement of co-accused is admissible against the other accused persons in the sense that it may be taken into consideration against them along with other evidence. But it cannot be the sole basis of conviction of a co-accused.”

(47) In the case in hand the accused Murad Hossain made confessional statement which is not supported by the evidence of other witnesses. But the learned court below erred in law in convicting the appellants relying upon uncorroborated confessional statement and thereupon the impugned Judgment cannot sustain in law.

(48) In the case in hand the accused petitioner has been identified by the P.W-4 and 8 during trial of the case on dock. It further appears from the confessional statement of Murad that he went to the place of occurrence at the request of Jahangir who did not inform about the commission of offence of dacoity. So the confessional statement maker accused Md. Murad Hossain had no knowledge about the commission of offence. The accused Jahangir did not inform him regarding the commission of offence of dacoity. So the allegation as projected in the First Information report which does not implicate the accused Murad with the offence punishable under section 395 and 397 of the Penal Code. The accused Murad Hossain went to the place of occurrence at the request of Jahangir for lurking around in Chattogram City and to have purchased some jute

discarded garments item. But he did not take part directly in the commission of dacoity as the learned court below relied upon the confessional statement of Murad Hossain and some alamats has been recovered from the possession of the accused Jahangir Alam which has not been subsequently seized in connection of this case it has been seized by the sub-inspector of Sitakunda Police Station. Even which has not produced before the court and did not exhibit as material exhibit. So the recovery as claimed by the investigating officer from the possession of accused Jahangir also make doubtful over recovery of money and almost from Jahangir and other accused Shipon, Abbas and Shahjalal involved in connection of this case upon the report of investigating officer. It further appears from the record no incriminating articles have been recovered in connection of this case and the confessional statement did not support the prosecution story which is not inculpatory in nature because the confessional statement maker accused Murad Hossain gave details as to the commission of dacoity. But he did not implicate himself with

commission of dacoity. The investigating officer without ascertaining his involvement and other accused persons with the offence of dacoity have submitted charge sheet without getting sufficient evidence against the convict appellants. P.Ws-10 and 11 are the seizure list witness but some incriminating articles have been recovered from the place of occurrence that is in front of Railway School but the seizure list witness p.ws-10 and 11 clearly stated on their cross examination that they put their signature at the instruction of the police but the articles as shown in the seizure list which was not shown to them before recovery from the place of occurrence. P.Ws-10 and 11 did not support the seizure list though they admitted their signature on the seizure list and other seizure list witness as to recovery of money amounting to taka 3,22,500/- (three lakh twenty two thousand five hundred) and other firearms. The investigating officer has not produced the seizure list witness recovery of huge amount of taka from the possession of the accused Jahangir Alam and the firearms and money amounting to taka 3,22,500/-(three

lakh twenty two thousand five hundred) recovered from the possession of Jahangir for which FIR was lodged with Sitakunda Police Station being P.S Case No.06 dated 07.03.2006. On the other hand the suggestion was given by the accused Jahangir he was coming to Chattogram Town from his father-in-law's house and it further appears from the deposition of p.w-1 the accused Jahangir entered into an altercation with a CNG driver. Thereafter some people gathered in the place of occurrence and a Habilder in charge of Baro Awlia output Police Station under Sitakunda Police Station arrested him and recovered the alamats from the possession of the accused Jahangir Alam. But the Habilder was not examined in court in support of recovery of alamats from the possession of Jahangir which also caused doubt of the prosecution case. It further appears from the record the alamats in question as has not been exhibited in connection of this case. So the recovery of alamats allegedly from the possession of the accused Jahangir which also doubtful before this court without seizing the incriminating articles upon only oral

evidence the court cannot place reliance upon the oral evidence of investigating officer. It further appears from the record the accused Jahangir was arrested in connection of a case lodged with Sitakunda Police Station being P.S Case No.06 and Tk.3,22,500/-(three lakh twenty two thousand five hundred) taka was recovered from the possession of Jahangir but the investigating officer of this case has not placed him on remand for interrogation to recovery the rest money robbed from the possession of the accused Jahangir. But the investigating officer did not take him into his custody and even he did not file an application before the Magistrate to place him remand by way of interrogation which also makes doubt over the prosecution story. It further appears from the record other witnesses examined on behalf of the prosecution which are the witness in formal in nature because even the informant has not mentioned any name of the accused in the First Information Report. He did not give any description regarding the contour of the dacoits but after arrest of Jahangir and after produce at the time of trial he

identified the accused which is doubtful because the trial was begun by framing of charge on 20.07.2008. But the incident took place on 07.03.2006 which is two years after from the date of incident and the informant identified the accused which caused a serious doubt after long gaps of time at the time of trial. Even the investigating officer has not confirmed before the court at the time of giving evidence the firearms which was snatched away from the possession of the informant was given in jimma or not. The accused Abbas has been arrested in connection of a case lodged with Sitakunda Police Station but the incriminating articles were recovered from the possession of Jahangir Alam within the area of Sitakunda Police Station. But he has been arrested in connection of this case without taking into possession of the incriminating articles seized in connection of a case lodged with Sitakunda Police Station which are only deposed in court without supporting the prosecution story. P.Ws-2, 5, 6 and 7 was tendered by the prosecution and declined to cross examination by the accused persons. P.W-2 who is the

confessional statement recording Magistrate she stated that the confessional statement was recorded observing all legal formalities as laid down under section 164 and 364 of the Code. P.Ws-10 and 11 is the seizure list witness they did not support the seizure list at all. P.W-9 investigating officer who held the investigating in a cursory manner and submitted charge sheet against the accused persons without getting any document in support of their involvement with this case. P.W- 4 is the informant. P.Ws-4 and 8 who was going to draw money and deposit it in the account of informant P.W-4 and the other witnesses which did not support the prosecution story. Thereafter the learned court below without properly sifting the evidences on record arrived at a wrong decision convicting the convict appellant under section 395 and 397 of the Penal Code. Because the accused Murad who went to the place of occurrence keeping the request of his friend Jahangir. But he did not know earlier before going to the place of occurrence so he did not knowingly go to the place of occurrence for commission of offence of



dacoity. So his intention was not for commission of dacoity in the place of occurrence but it also appears from his confessional statement. The learned court below further convicted the accused persons under section 397 of the Penal Code and sentenced there under for a period of 10 years with pay a fine of taka 10,000/- in default to suffer simple imprisonment for 1(one) month more but the learned court below further imposed sentence for a period of 7 years under section 397 of the Penal Code without imposing fine against the accused persons which was absolutely illegal because as per section 397 of the Penal Code there was a provision for imposing fine against the accused persons. In the instant case the learned court below only imposed sentence not without imposing fine which was absolutely illegal because section 397 where there is a provision for imposing fine but the sentence was only awarded which is not permissible in law. It further appears from plain reading of the impugned judgment the learned court below completely relied upon the confessional statement made by Murad and an alams

were seized in connection of a case lodged in Sitakunda Police Station being Case No.06 dated 07.03.2006. That the alamats seized in connection of the Sitakunda Police Station has not produced before the concerned court at the time of trial but the learned court below arrived at a decision only relying upon the evidence of investigating officer but the learned court below ought to have taken in to consideration the alamats which has been seized in connection of a case lodged with Sitakunda Police Station which was not produced before him during the trial of the case. In the back ground of the evidence of investigating officer P.W-9. We refer a case

Surinder . . . . . Appellant

-Vs-

State of Haryana . . .

Respondent

reported in (1994)4 SCC, at

page-365, wherein your

lordship observed as under:

“Articles seized when not sealed, cast a serious doubt on prosecution case”

In the above reference the articles were seized but it was not sealed properly, which cast a doubt over recovery of articles.

In the case in hand no material alamats were seized in connection of this case.

(49) In spite of that the learned court below arrived at a decision erroneously without considering the evidence of p.w-4 and P.W-8. P.W-4 lodged a First Information Report without mentioning name of any accused in connection of this case. But after arrest Jahangir Alam within the territory of Sitakunda Police Station and he has been arrested in connection of this case thereafter the informant has not given any description as to the convict appellants. After securing his arrest during trial the informant and P.W-8 identified them upon the identification the court arrived at a decision that the accused persons was identified by the informant and also P.W-8 which was not correct appreciation of evidences as produced by the prosecution. It further appears the learned court below observed that the alamats, a CNG auto run

rickshaw was recovered in front of a Post Office in Saderghat area under Kotawli Police Station, Chattogram. The investigation officer clearly mentioned in his charge sheet the accused Abbas was the driver of the CNG run auto rickshaw but the CNG was not recovered from the possession of the accused Abbas even the investigating officer did not ascertain the accused Abbas was driver of the seized CNG run auto rickshaw without producing any license from the possession of the accused Abbas and the accused Md. Murad Hossain though made a confessional statement under section 164 of the Code of Criminal Procedure wherein he did not implicate himself with the offence as depicted in the First Information Report he only gave an account of an incident but the investigating officer relying upon the confessional statement made by the accused Murad and securing arrest of Jahangir and then submitted charge sheet without entering into the case or without seizing relevant documents in connection, recovery of incriminating articles allegedly from the possession the accused Jahangir Alam. So the

investigating officer submitted charge sheet without getting sufficient evidences against the accused persons. Thereafter the learned court below without entering into the evidence and sifting in its true prospective arrived at a decision without assigning any cogent reason for convicting the accused under section 395 and 397 and sentencing there under for a period of 10 years and 7 years respectively which is not based on evidence. It further appears from plain reading of the judgment in question the learned court below arrived at a decision without entering into the evidence on record rather swayed its emotion and imposed notional conviction upon the accused though the learned court below was Additional Sessions Judge which is admittedly a senior Judicial Officer in the lower judiciary but the judgment was delivered by the learned court below without entering into the fact and circumstances of this case even without getting intrinsic meaning of section 395 and 397 of the Penal Code. Furthermore the learned court below did not impose fine

upon the accused under section 397 of the Penal Code which was mandatory in nature.

(50) Considering the facts and circumstances and other evidences on record we hold that the prosecution has hopelessly failed to produce sufficient cogent and reliable evidence for awarding conviction of the accused persons rather the learned court below arrived at a decision convicting and sentencing the accused as mentioned above which is not the basis of legal evidence and the conviction and sentence awarded by the learned court below in connection of this case which was not the proper appreciation of evidences produced on behalf of the prosecution.

(51) In view of the facts and circumstances we hold that the prosecution failed to prove the charge beyond reasonable doubt against the accused persons for which it deserves to be set-aside and the Judgment cannot stand in law. Thus The appeal preferred by the convict appellants having got merit.

**(52) In the result:**

(I) The above appeals are allowed and the impugned judgment and order of conviction and sentence dated 02.11.2020 so far as relates to the appellants namely Md. Abbas son of late Gani Mollah, preferred an appeal being No.8856 of 2020 herein and other convict appellants namely Md. Jahangir Alam @ Korom Ali son of Abdul Ali, Md. Shipon @ Shipoinya son of Mahmud Hossain preferred an appeal being No.2197 of 2021 herein and other convict appellant namely Md. Shahjalal @ Jalal son of late Taru Miah Driver preferred an appeal being No.9682 of 2022 herein and other convict appellant namely Md. Murad Hossain son of late Hashmot Ali also preferred appeal being No.11068 of 2022 are hereby set aside .

(II) The convict appellants are found not guilty and they are acquitted from the charged level brought against them.

(III) Sureties are discharged from their respective bail bond.

(53) The Office is directed to send down the records along with a copy of the judgment communicate at once.

**(Justice K.M. Emrul Kayesh)**

**Syed Md. Ziaul Karim, J:**

I agree.