

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 6778 of 2022

Laxmi Narayan Bhua and another

...Convict-appellants

-Versus-

The State and another

...Respondents

Mr. S. M. Aminul Islam, Advocate with

Mr. Azizur Rahman Dulu, Advocate

...For the convict-appellants

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

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

Mr. Mir Moniruzzaman, A.A.G

...For the State

Ms. Chowdhury Nasima, Advocate

...For the respondent No. 2 (ACC)

Heard on 22.05.2025, 25.05.2025, 27.05.2025,  
25.06.2025, 01.07.2025 and 02.07.2025

**Judgment delivered on 07.07.2025**

This appeal under Section 10(1A) of the Criminal Law Amendment Act, 1958 is directed challenging the legality and propriety of the impugned judgment and order of conviction and sentence dated 19.07.2022 passed by Divisional Special Judge, Barishal in Special Case No. 10 of 2019 convicting the appellants under Section 409 of the Penal Code, 1860 and sentencing them thereunder to suffer rigorous imprisonment for 5(five) years and fine of Tk. 35,00,000.

The prosecution case, in short, is that the accused Laxmi Narayan Bhua was the Executive Engineer, PGCB, GMD, Barishal, and the accused Md. Hanif Hossain Gazi was the Deputy-Divisional Engineer, Greed Sub-Centre, Vandaria Pirojpur. The allegation against the FIR named accused Md. Ataur Rahman (P.W. 3) of Vandaria (Pirojpur) Police Station Case No. 07 dated 28.09.2014, regarding misappropriation of Tk. 1,36,67,547 was not proved. The tender notice No. Greed PGCB/Bari-295/2012/271 dated 01.11.2012 and other documents were forged. At the time of comparing the

signatures by the handwriting expert of the CID, it was found that the accused Md. Aatur Rahman was not involved in the alleged tender and after investigation, Final Report No. 33 dated 10.08.2017 was submitted in favour of the accused Md. Aatur Rahman, Proprietor of Messrs Rahman Enterprise. During the investigation of the said case, it was found that the accused Laxmi Narayan Bhua forged the signature of the accused Md. Aatur Rahman to show that the said Md. Aatur Rahman is a responsive tenderer, although he did not participate in the tender. The accused Laxmi Narayan Bhua handed over the work order to one Tuhin, who was previously known to her through the Office Assistant, forging the signature of Md. Aatur Rahman. A list of inventory was prepared on 30.05.2015 regarding the deposit of the goods. In the application dated 30.05.2013, it has been shown that the goods were received. The accused persons misappropriated goods of PGCB amounting to Tk. 1,37,67,547 and falsely implicated the innocent contractor Md. Aatur Rahman in the said case and committed offence under Sections 120B/409 of the Penal Code, 1860, and Section 5(2) of the Prevention of Corruption Act, 1947. The accused Md. Hanif Hossain Gazi signed the joint report of the goods, forging the signature of the said contractor Md. Aatur Rahman. He signed the list of inventory dated 03.06.2013, showing partly receipt of the goods and misappropriated total Tk. 36,67,507. The accused Md. Anowar Hossain, Security Inspector PGCB, Khulna was not authorized to lodge the Vandaria Police Station Case No. 07 dated 28.09.2014, and without approval of the authority, in connivance with other 2 accused persons, misappropriated Tk. 1,36,67,547.

P.W. 8 Md. Matiur Rahman, Deputy Director, ACC, Combined District Office, Barishal, was appointed as Investigating Officer of the case. During the investigation, he visited the place of occurrence, seized documents, and recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure,

1898. During the investigation, he found the prima facie truth of the allegation of misappropriation and submitted charge sheet against the appellants and Md. Anowar Hossain under Sections 120B/409 of the Penal Code, 1860, and Section 5(2) of the Prevention of Corruption Act, 1947.

After that, the Chief Judicial Magistrate, Pirojpur sent the case to the Senior Special Judge, Pirojpur who by order dated 16.01.2019 took cognizance of the offence against the accused-persons under Sections 120B/409 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947 and sent the case to the Divisional Special Judge, Barishal and the case was registered as Special Case No. 10 of 2019. During the trial, charge was framed against the accused persons under Sections 120B/409 of the Penal Code, 1860, and Section 5(2) of the Prevention of Corruption Act, 1947, which was read over and explained to the accused persons, and they pleaded not guilty to the charge. During the trial, the prosecution examined 15(fifteen) witnesses to prove the charge against the accused persons. After examination of the prosecution witnesses, the accused persons were examined under Section 342 of the Code of Criminal Procedure, 1898, and after concluding the trial, the trial Court by impugned judgment and order convicted the appellants and sentenced them as stated above and acquitted the co-accused Md. Anowar Hossain. Against the said judgment passed by the trial Court, the appellants filed this appeal.

P.W. 1 Muhammad Mashiur Rahman was the Sub-Assistant Engineer, PGCB, Rupatoly, Barishal. He stated that on 05.10.2017, at the instruction of his higher authority, he went to the Office of ACC, Barishal. On that day at 4.45 pm, Deputy Director Md. Matiur Rahman of ACC prepared a seizure list. He signed the seizure list. He proved the seizure list as exhibit 1 and his signature on the seizure list as exhibit 1/1. On 05.10.2017 at 5.24 pm, he also seized 12 items of documents and prepared the seizure list. He signed the seizure list. He

proved the seizure list as exhibit 2 and his signature as exhibit 2/1. On 05.10.2017 at 6.00 pm, the said Md. Matiur Rahman also prepared a seizure list and he signed the seizure list. He proved the seizure list as exhibit 3 and his signature on the seizure list as exhibit 3/1. He took custody of the seized documents and kept them in the office. He proved the memo dated 22.10.2014 as exhibit 4. He proved the MRR signed by 05 Officers on 02.11.2014, (12 pages) as exhibit 5, report dated 04.06.2013 as exhibit 6, report dated 06.06.2013, total 05 pages as exhibit 7, report dated 26.08.2014, 01 page signed by Ziko Hossain as exhibit 9, no claim certificate dated 23.06.2003 as exhibit 10, work order from March/13 to May/2013 total 11 pages as exhibit 11, office order of DMD dated 14.03.2013, 01 page as exhibit 12, memo No. 1169 dated 30.06.2013 of Messrs Rahman Enterprise, memo dated 19.11.2013, 3 pages as exhibit 13, bills from March/13 to June/13, total 04 pages as exhibit 14 and 02 reports regarding the execution of the work and deposit of the goods by the contractor, 02 pages as exhibit 15. During cross-examination, he admitted that he only received a copy of the seizure list. He did not receive any goods. He had no personal knowledge about said seizure lists.

P.W. 2 Md. Abdur Rashid Akon was the Assistant Inspector (former), ACC, Barishal. He stated that from 2015-2018, he was posted at the Combined District Office, Barishal-3. He is the witness of the seizure list prepared on 05.10.2017 at 4.25 pm. 45 pages of documents mentioned in the seizure list were seized. He signed the seizure list. He proved the seizure list as exhibit 16 and his signature on the seizure list as exhibit 16/1. On 05.10.2017 at 4.45 pm, another seizure list was prepared, and he signed the seizure list. He proved his signature on the seizure list as exhibit 1/2. He also signed the seizure list prepared on 05.01.2017 at 5.25 pm. He proved his signature on the seizure list (exhibit 2) as exhibit 2/2. He signed the seizure list dated 05.10.2017, prepared at 6.00 pm. He proved his signature on the seizure list (exhibit 3) as exhibit 3/2. He also signed the seizure list

dated 06.03.2016, prepared at 1.15 pm at the Office of the ACC, Barishal. He signed the seizure list. He proved his signature on the seizure list as Exhibit 17/1. He signed the seizure list dated 21.03.2016, prepared at 12.15 pm at the Office of the ACC, Combined District Office, Barishal, regarding 45 pages of documents. He proved his signature as exhibit 18/1 on the seizure list (exhibit 18). During cross-examination, he admitted that he had no personal knowledge about the documents seized. The name of Messrs Rahman Enterprise was written on seized documents.

P.W. 3 Md. Ataur Rahman is a businessman. He is a contractor and was accused of Vandaria PS Case No. 7 dated 28.09.2014 filed by the accused Md. Anowar Hossain. He stated that the accused Nos. 1-3 using the name of Rahman Enterprise, forged work order. He did not participate in the tender regarding the recovery of the goods of the 132 KV transmission line. The accused Nos. 1-3 using the name of his establishment, submitted the tender, and prepared the office order. Although he was not aware of the matter, he was implicated in a false case. After the investigation, the CID found that his signature was forged, for which he was discharged from the case. He firmly stated that he did not submit any tender for the said work. During cross-examination, he stated that he is the proprietor of Messrs Rahman Enterprise. The office of the said enterprise is located at 27, Dishari (second floor), Indira Road, Farmgate, Dhaka. Although he is an enlisted contractor of the PGCB, he did not do any work for the PGCB. He was not informed about the work order. He denied the suggestion that a work order was issued in his name, and he was aware of that. He affirmed that Arif Iftekhar is his full brother. S.M Shafiul Alam Tuhin is the brother of his wife. He is not aware that said Arif Iftekhar deposited Tk. 108086(one lakh eight thousand eighty-six) through AB Bank, Barishal Branch on 10.03.2000 for the work order of the said work. He is not aware of the fact that his brother deposited Tk. 2000 on 10.04.2012 through Janata Bank,

Faridpur Branch. He admitted that on 03.06.2013 said S.M Shafiul Alam Tuhin partly misappropriated goods in his name. He is not aware of the fact that accused No. 1 issued 3 letters to his establishment for depositing the goods which has been misappropriated. He denied the suggestion that Tuhin submitted the tender in his name.

P.W. 4 Md. Nurujjaman is the Retired Engineer, PGCB. He stated that he was posted at the Head Office, PGCB. At that time, he was discharging his duty as Superintendent Engineer, and he was selected as a member of a committee. The committee was assigned to submit a report regarding the failure to deposit the goods for the transmission line. During the enquiry, it was found that most of the goods were collected by the contractor and deposited in the store, but there was a shortage of a few goods, amounting to Tk. 32,54,829(thirty two lakh fifty four thousand eight hundred and twenty nine). He proved the report as exhibit 19. He proved his signature on the report as exhibit 19/1. During cross-examination, he stated that the committee was assigned to find out the person responsible for the negligence of duty regarding the work done by Rahman Enterprise. The contractor was responsible for not depositing the goods in the store. The accused Laxmi Narayan, Hanif Hossain, and Ziko Hossain are responsible for not informing the matter to the higher authority, but there was no negligence of duty in their office. The committee did not prepare the book value of the work done by the contractor. The enquiry committee enquired about the matter from 22.10.2014 to 18.11.2015. During the enquiry, the committee did not find any financial irregularity against the accused Laxmi or Hanif, or Anowar Hossain.

P.W. 5 Md. Yakub Ali and P.W. 6 S.M Zakir Hossain were tendered by the prosecution and declined by the defence.

P.W. 7 Md. Firoj Alam was the Sub-Assistant Engineer, Public Works Department, Barishal. He stated that on 05.10.2017, he

went to the Office of the ACC, Barishal following the instructions of his authority. He signed the seizure list. He proved his signature on the seizure list as exhibit 16/2. The Deputy Director Md. Matiur Rahman of ACC prepared the seizure list. He was not aware of the content of the seizure list. During cross-examination, he stated that he signed the seizure list. He was not informed about the seizure list.

P.W. 8 Md. Matiur Rahman is the Deputy Director of ACC (retired). He stated that from April 2015 to January 2018, he discharged his duty as Deputy Director of ACC, Combined District Office, Barishal. At that time, the accused No. 3 Md. Anowar Hossain, as informant, filed the Vandaria Police Station Case No. 07 on 28.09.2014. During the investigation, it was found that the innocent contractor Md. Aatur Rahman was falsely implicated in the case, for which he submitted a final report. Following the recommendation made in that case, this case was filed on 20.08.2017. He proved the FIR dated 20.08.2017 as exhibit 20 and his signature on the said FIR as exhibit 20/1, which was registered as Vandaria Police Station Case No. 17 dated 20.08.2017. The fact of this case is that the accused Nos. 1-3 created an imaginary story regarding the false deposit of the goods amounting to Tk. 1,36,67,547(one crore thirty-six lakh sixty-seven thousand five hundred and forty-seven) against the innocent contractor who did not submit any tender. During the investigation, it was found that the accused persons misappropriated the amount, shifting the liability to the innocent contractor. Subsequently, on 22.08.2017, he was appointed as Investigating Officer and started the investigation from 23.08.2017. He visited the place of occurrence, recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898. On 05.10.2017 at 4.45 pm, he prepared a seizure list and took the signatures of the witnesses. He proved his signature on the seizure list as exhibit 1/3. On that day at 5.25 pm, he prepared another seizure list and took the signatures of witnesses. He proved his signature on

the seizure list as exhibit 2/3. On 05.10.2017 at 6.00 pm, he prepared a seizure list and took the signatures of the witnesses. He also signed the seizure list. He proved his signature on the seizure list as exhibit 3/3. On 05.10.2016 at 4.25 pm, he prepared a seizure list and took the signature of the witnesses. He proved his signature on the seizure list as exhibit 16/3. On 06.03.2016 at 1.15 pm, he also prepared a seizure list and took the signatures of the witnesses. He proved his signature on the seizure list as exhibit 17/2. On 21.03.2016, he prepared a seizure list and took the signatures of the witnesses. He also signed the seizure list. He proved his signature on the seizure list as exhibit 18/2. A forensic report regarding the signature of Ataur Rahman was collected. The FIR-named accused persons misappropriated total Tk. 1,36,67,547(one crore thirty-six lakh sixty-seven thousand five hundred and forty-seven) for which he submitted the charge sheet. During cross-examination, he stated that before this case, a case under Section 406/420 of the Penal Code, 1860 was lodged. The case continued for 14 months. The statement of Ataur Rahman was recorded on 05.10.2017. The witnesses mentioned in the case filed against the accused Ataur Rahman are also the witnesses of this case. He is not aware of the person who deposited the money for the tender in which the accused Ataur Rahman was involved. During the investigation, he did not find the book value of PGCB. He seized a few goods of the PGCB. The police investigated the case filed under Section 406/420. He denied the suggestion that one Tuhin deposited the goods on behalf of Rahman Enterprise. He recorded the statement of Tuhin @ Shafiul Tuhin on 05.10.2020. Tuhin stated in the statement under Section 161 of the Code of Criminal Procedure, 1898, that from 2010 to 2014, he discharged his work regarding the contract. He also admitted that he had done the work through the license of Ataur Rahman. He also admitted that he signed his name and got the work. During the investigation, he did not send the

signature of Shafiul Alam Tuhin for the report of the handwriting expert. He denied the suggestion that he deposed falsely.

P.W. 9 AKM Anowar Hossain is the Executive Engineer PGCB, Barishal (retired). He stated that from 04.08.2014, he discharged his duty as Executive Engineer, Greed Division, PGCB, Barishal. He discharged his duty from 04.08.2014 to 09.05.2017. The FIR was lodged regarding the work order dated 10.03.2013. At that time, he was not posted there. He admitted that Deputy Director Md. Matiur Rahman forced him to sign the written statement. He prepared a statement as he wished. He was declared hostile. During cross-examination on behalf of the State, he denied the suggestion that he deposed falsely to save the accused persons. During cross-examination on behalf of the accused, he stated that on 23.02.2011, he signed the work order issued in favour of Rahman Enterprise. On 16.02.2012, bills were paid to Rahman Enterprise. While he was discharging his duty at Barishal on 28.01.2016, Messrs Rahman Enterprise was black listed.

P.W. 10 Md. Delowar Hossain was the Office Assistant, PGCB, Barishal. He stated that on 10.03.2013, he handed over a letter to Messrs Rahman Enterprise, and Tuhin received the letter. During cross-examination, he stated that he is not aware of the case.

P.W. 11 Kamrul Ahsan is the former Chief Engineer, PGCB, Dhaka. He stated that from 01.06.2014 to 24.03.2018, he was the Chief Engineer of the Transmission Line-2, PGCB. At that time, a work order was issued in favour of Messrs Rahman Enterprise for collecting the old goods of 132 KV transmission line, Vandaria Greed Sub-station, Barishal, Bagerhat. In the work order, it has been stated that the unused goods would be deposited in the store within 90(ninety) days. Messrs Rahman Enterprise did not deposit the goods in the store. An enquiry committee was formed. He was the convener of the committee. On 18.11.2015, the four-member committee submitted the report total 05(five) pages). He signed the report as

convener of the committee. He proved his signatures on the report as exhibits 19/2 and 19/3. During cross-examination, he stated that the enquiry report was submitted to the Managing Director of PGCB. In the report, they unanimously stated that the contractor was responsible for not depositing the goods in the store. In column No. 01 of the report, it has been mentioned that most of the goods were deposited, except few goods. Total goods valued at Tk. 32,54,829(thirty two lakh fifty four thousand eight hundred twenty nine) was not deposited. The book value of the goods was determined by the head office at Tk. 6,43,501(six lakh forty-three thousand five hundred one) and he is aware of that.

P.W. 12 Md. Ziko Hussain was the Sub-Assistant Engineer, PGCB. He stated that after training, on 12.12.2006, he joined the Office of Vandaria Greed Sub-station as Sub-Assistant Engineer. On 09.06.2016, he discharged his duty in the Vandaria Greed Sub-station. Subsequently, he was transferred. He discharged his duty as Store-in-Charge of Vandaria Sub-station. At that time, a list of goods deposited in the store was prepared, and as Store-in-Charge, he signed the list. While he discharged his duty, he found the goods in order. He was transferred on 09.06.2013 and handed over the charge on 10.06.2013 to Suman Mazumder. While he was discharging his duty, there was no irregularity. During cross-examination, he stated that he signed the correct list, but he did not hand over the list to the Investigating Officer. A departmental enquiry was also held. A report was submitted against him regarding his negligence of duty. On 03.06.2013, while the goods were being deposited by the contractor, he was present along with the Store-in-Charge.

P.W. 13 Md. Sohel Rana is the Junior Electrician, PGCB. He stated that he joined the PGCB, Vandaria Greed Sub-station, and till now, he has been posted there as a Junior Electrician. The police prepared a seizure list regarding the goods seized on 02.10.2014, and he signed the seizure list. The said seizure list is not produced in

Court. He signed the seizure list following the instructions of the police. He is not aware of the facts of this case.

P.W. 14 Suman Mazumder was the Sub-Assistant Engineer, PGCB, Vandaria. He stated that from 23.01.2011 to 17.06.2015, he was posted at Vandaria Greed Sub-station, PGCB. Electric materials were stolen from the said Substation. He is not aware of the people who stole the goods. During cross-examination, he stated that he is not aware of the occurrence of the instant case. He is also not aware of the goods seized in the case.

P.W. 15 Md. Refatul Islam is the Store-in-Charge. He stated that on 09.10.2011, he joined as Assistant Store-Keeper of PGCB, Barishal, and discharged his duty there till 2015. Md. Hanif Hossain Gazi was the Officer in charge of the Vandaria Greed Sub-station. The key to the store was kept in the custody of Hanif Hossain Gazi. Ataur Rahman, Proprietor of Rahman Enterprise, is not known to him. He took the delivery of the goods deposited by said Ataur Rahman. At the time of the deposit of the goods, Hanif Gazi and Ziko Hasan were present. During cross-examination, he admitted that he is the custodian of the ledger of GMD, Barishal. Tuhin, representative of Rahman Enterprise, handed over the goods. He was known to him. Said Tuhin is the relation of Ataur Rahman. Tuhin discharged the duty regarding the deposit and taking the goods from the store. He received the goods mentioned in the list dated 05.06.2013. He also received the goods mentioned in the list dated 02.11.2014. After lodgment of this case, the ACC did not verify the goods. He did not hear that the accused persons misappropriated the goods. Tuhin discharged many duties along with them. He also withdrew the bills. He is aware of the fact.

Learned Advocate Mr. S. M. Aminul Islam, appearing along with learned Advocate Mr. Azizur Rahman Dulu on behalf of the appellants, submits that on behalf of Messrs Rahman Enterprise, Proprietor Md. Ataur Rahman, participated in the tender for collecting

the used goods of 132 KV transmission lines from Vandaria to Kocha River, and the work order was also issued in favour of Messrs Rahman Enterprise, but he did not deposit all the goods collected by him, and the four-member enquiry committee headed by P.W. 11 submitted the report on 18.11.2015 stating that Md. Ataur Rahman, Proprietor of Rahman Enterprise, as a contractor, is responsible for not depositing the collected goods of the said Sub-station, and in the said report, it has been mentioned that the accused persons are not responsible for not depositing the goods. He further submits that the Investigating Officer P.W. 8, in connivance with P.W. 3, illegally submitted a false final report in Vandaria (Pirojpur) Police Station Case No. 7 dated 28.09.2014, and no expert report regarding handwriting of P.W. 3 Md. Ataur Rahman, Proprietor of Messrs Rahman Enterprise, has been proved in the case. He also submits that despite the enquiry report dated 18.11.2015 (exhibit 19) submitted in favour of the accused-persons by four members committee head by Chief Engineer P.W. 11 Kamrul Ahsan, the Investigating Officer malafide submitted charge sheet in instant case falsely implicating the accused-persons and prosecution failed to prove the charge against them beyond all reasonable doubt and the trial Court failed to adopt the correct principle of assessment and evaluation of the evidence and arrived at a wrong decision as to the guilt of the accused-persons and illegally convicted them. He prayed for setting aside the impugned judgment and order passed by the trial Court.

Learned Advocate Ms. Chowdhury Nasima, appearing on behalf of the respondent No. 2 (ACC), submits that the accused persons forged tender for collecting the old used goods of 132 KB transmission line and misappropriated total Tk. 1,32,00,000 and illegally filed Vandaria Police Station Case No. 7 dated 28.09.2014 against P.W. 3. During investigation of the case, it was found that the accused persons showing a false tender in the name of P.W. 3, misappropriated the said amount and filed a false case against him

(P.W. 3). During trial, the prosecution proved that the accused-persons forging work order for collecting the old used materials of the said transmission line misappropriated total Tk. 35,00,000 and the prosecution proved the charge against the accused persons beyond all reasonable doubt. She prayed for the dismissal of the appeal.

I have considered the submission of the learned Advocate Mr. S. M. Aminul Islam who appeared along with learned Advocate Mr. Azizur Rahman Dulu on behalf of the appellants and the learned Advocate Ms. Chowdhury Nasima who appeared on behalf of the respondent No. 2 (ACC), perused the evidence, impugned judgment and order passed by the trial Court and the records.

On perusal of the evidence, it appears that the alleged occurrence took place between November 2012 to December 2015, and Vandaria Police Station Case No. 7 was lodged on 28.09.2014 against P.W. 3 Md. Ataur Rahman. A four-member enquiry committee was formed vide memo dated 23.09.2014 headed by P.W. 11 Chief Engineer Kamrul Ahsan of PGCB for enquiry. P.Ws. 4 to 6 were the members of the said enquiry committee. After the enquiry, the said committee submitted a report on 18.11.2015. P.W. 4 proved the said report as exhibit 19. In the report, it has been mentioned that a work order was issued on 10.03.2013 in favour of Messrs Rahman Enterprise for collecting the used materials of the 132 kV (abandoned) transmission line. The contractor P.W. 3 Md. Ataur Rahman was responsible for not depositing the goods of the said grid line in the store of the PGCB and the accused persons are not responsible for the missing goods.

During cross-examination, P.W. 4 Md. Nurujjaman, member of the enquiry committee, stated that the contractor is responsible for not depositing the goods in the store, and during the enquiry from 22.10.2014 to 18.11.2015, the enquiry committee did not find any financial irregularity against the accused persons. P.W. 11 Kamrul Ahsan, former Chief Engineer, PGCB, Dhaka, stated that a work

order was issued in favour of Messrs Rahman Enterprise, and the contractor P.W. 3 Md. Aatur Rahman was directed to collect the unused goods/materials within 90(ninety) days, but he did not deposit the goods within the said period. During cross-examination, he affirmed that the contractor was responsible for not depositing the collected materials/goods of the PGCB in the store. P.W. 4 corroborated the evidence of P.W. 11 regarding the failure of the contractor in not depositing the goods in the store.

P.W. 9 AKM Anowar Hossain, Executive Engineer, PGCB, Barishal (retired), stated in examination-in-chief that the Deputy Director Matiur Rahman of ACC forcibly took his signature on the written paper. Thereafter, he was declared hostile. During cross-examination, P.W. 9 admitted that when he was posted at Barishal on 28.01.2016, Messrs Rahman Enterprise was black listed. In the enquiry report (exhibit 19), it has been specifically mentioned that the work order was issued in favour of Messrs Rahman Enterprise. Therefore, there is no scope to deny the fact by the prosecution that work order was not issued in favour of Messrs Rahman Enterprise for collecting the used goods of 132 KV (abandoned) transmission line. The above evidence of the prosecution witnesses depicts that P.W. 3 Md. Aatur Rahman, Proprietor of Messrs Rahman Enterprise, participated in the tender and obtained the work order for collecting the used materials of 132 KV (abandoned) transmission line of the PGCB P.W. 3 Md. Aatur Rahman, Proprietor of Messrs Rahman Enterprise, did not deposit the collected goods of the said grid line in the store. Therefore, he is responsible for missing the goods of the PGCB.

P.W. 10 Md. Delowar Hossain, Office Assistant, PGCB, Barishal stated that on 10.03.2013, he handed over a letter to Messrs Rahman Enterprise, and Tuhin received the letter. P.W. 15 Store-in-Charge Md. Refatul Islam admitted in cross-examination that Tuhin discharged his duty regarding deposit and taking out of goods from

the store. P.W. 8 Investigating Officer Md. Motiur Rahman stated that he recorded the statement of Tuhin @ Shafiul Tuhin on 05.10.2020, who stated that he discharged his duty regarding the contract from 2010 to 2014 through the license of Ataur Rahman. P.W. 8 stated that he did not send the signature of Tuhin @ Shafiul Alam to the handwriting expert. P.W. 3 Md. Ataur Rahman, admitted that S.M. Shafiul Alam Tuhin is the brother-in-law of his elder brother Arif Iftekhar. The defence suggested to P.W. 3 that his brother Arif Iftekhar deposited Tk. 108086 which has not been denied by him. He admitted that on 03.06.2013 Shafiul Alam Tuhin partly misappropriated the said goods in his name. The above evidence of P.W.s 3, 8 and 15 depicts that P.W. 3 Md. Ataur Rahman submitted the tender and accepted the work order, but he did not deposit the collected goods amounting to Tk. 35,00,000. No reason has been assigned by P.W. 8 Md. Motiur Rahman as to why he did not rely on the departmental enquiry report (exhibit 19). I do not find any reason to disbelieve the said enquiry report dated 18.11.2015 (exhibit 19). P.W. 8 illegally submitted the final report in Vandaria PS Case No. 7 dated 28.09.2014 in favour of P.W. 3 and mala submitted the charge sheet in the case against the accused-persons.

In the FIR it has been alleged that the accused Laxmi Narayan Bhua forged the tender in the name of Md. Ataur Rahman and fraudulently she handed over the work order through Office Assistant to Tuhin who was known to her. P.W. 3 Md. Ataur Rahman admitted in cross-examination that S.M. Shafiul Alam Tuhin is the brother-in-law of his elder brother Arif Iftekhar and S.M. Shafiul Alam Tuhin misappropriated few goods/materials of the tender in his name which proved that said Tuhin is the relation of P.W. 3 Md. Ataur Rahman and disproved the above statement made in the FIR against the accused Laxmi Narayan Bhua. I am of the view that the trial Court did not consider the enquiry report submitted by four-member committee (exhibit 19) and arrived at a wrong decision as to the guilt

of the accused persons. The prosecution failed to prove the charge against the accused persons beyond all reasonable doubt.

P W 8 malafide and illegally submitted FRT No. 33 on 10.08.2017 in Vandaria P.S. Case No. 7 dated 28.09.2014 in favour of P.W. 3 Md. Ataur Rahman, Proprietor of Messrs Rahman Enterprise in defiance of the departmental inquiry report dated 18.11.2015 (exhibit 19) and illegally submitted charge sheet on 30.04.2018 in the instant case against the accused-persons. P.W. 8 maliciously blew hot and cold during investigation of the said cases arising out of the same occurrence and illegally submitted the final report on 10.08.2017 in the said case. Therefore, he committed gross misconduct.

The Chairman, Anti-Corruption Commission is directed to initiate the departmental proceeding against P.W. 8 Investigating Officer Deputy Director Md. Matiur Rahman who illegally submitted the final report in Vandaria Police Station Case No. 7 dated 28.09.2014 in favour of the accused Md Ataur Rahman within 1(one) month from the date of receipt of the judgment and order and take departmental action accordingly.

I find merit in the appeal.

In the result, the appeal is allowed.

The impugned judgment and order of conviction and sentence passed by the trial Court against the appellants Laxmi Narayan Bhua and Md. Hanif Hossain Gazi is hereby set aside.

However, there will be no order as to costs.

The office is directed to send a copy of this judgment to the Chairman, Anti-Corruption Commission to take necessary action.

Send down the lower Court's records at once.