

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

Present:

Mr. Justice Md. Shohrwardi
Criminal Appeal No. 9967 of 2022 with
Criminal Appeal No. 9968 of 2022 with
Criminal Appeal No. 9685 of 2022

Shamima Aktar and others
.Appellant in Cril. A. No. 9967 of 2022
Md. Hossain Ali
.Appellant in Cril. A. No. 9968 of 2022
Selima Sultana
..Appellant in Cril. A. No.9685 of 2022

-Vs-

The State and another

Mr Nitai Roy Chowdhury, Advocate with
Mr. Md. Tariqul Islam, Advocate
... For the appellant in Cril. A. No. 9967 of 2022
Mr. Sharan Chandra Talukder, Advocate
... For the appellant in Cril. A. No. 9968 of 2022
Mr. Sk. AKM Moniruzzaman, Advocate
... For the appellant in Cril. A. No. 9685 of 2022
Mr. A.K.M. Fazlul Haque, Advocate
...For respondent No.2 in all the appeals
Mr. Md. Akhtaruzzaman, DAG with
Mr. Sultan Mahmood Banna, AAG with
Mr. Mir Moniruzzaman, AAG
....For the State

Heard on 26.01.2025, 10.02.2025 and 11.02.2025.

Judgment delivered on 03.03.2025

The above-mentioned criminal appeals have arisen out of the impugned judgment and order passed by the trial Court. Therefore, all the appeals were heard analogously and disposed of by this single judgment.

The above-mentioned criminal appeals are directed against the impugned judgment and order dated 25.09.2022 passed by the Divisional Special Judge, Khulna in Special Case No. 11 of 2017 arising out of Satkhira Police Station Case No. 74 dated 30.11.2006 corresponding G.R. No. 672 of 2006 convicting the appellants under sections 409/420/467/468/109 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947 and sentencing

them to suffer rigorous imprisonment for 07 (seven) years and fine of Tk. 10,000(ten thousand) each, in default, to suffer imprisonment for 01(one) month.

The prosecution case in a nutshell is that the accused persons (1). Ranjeet Kumar Sarker (2). Sirajul Islam Mollah (3). Tarapada Sana (4). Abul Kalam (5). Sheikh Mahabubur Rahman is the staff of the SA Section of Deputy Commissioner, Satkhira. In connivance with co-accused Abdur Razzak, they recorded 12.83 decimals of land in the name of Asraf Ali and Abdus Salam in Mutation Case No. 298/66-67 forging the record of the SA Khatian. There was no existence of Mutation Case No. 298/66-67. The last serial of Mutation Case No. is 266/66-67. The accused persons recorded the land in the name of Asraf Ali and Abdus Salam illegally inserting their names in said mutation case. The said 12.83 acres of land was vested property and forging the records, the accused persons released the said property from the list of vested property and illegally recorded the said land in the name of Asraf Ali and Abdus Salam.

Sub-Inspector Md. Rakibul Islam took up the investigation of the case. Thereafter, ABM Abdus Sabur, DAD, Anti-corruption Commission was appointed as investigating officer. During the investigation, he visited the place of occurrence, seized the records, and recorded the statement of the witnesses under section 161 of the Code of Criminal Procedure, 1898. After completing the investigation, he submitted memo of evidence on 13.10.2012 and after obtaining approval on 14.03.2013 submitted charge sheet on 25.03.2013 against the accused Abdur Razzak Gazi, Sk. Mahabubur Rahman. Shamima Aktar, Shyamal Kumar Acharjee, Begum Jesmin Nahar, Selima Sultana, Md. Afsar Uddin and Md. Hossain Ali under sections 409/109 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947 and final report in favour of the FIR named accused persons Sirajul Islam Mollah, Abul Kalam, Ranjit Kumar Sarker and Tarapada Sana.

During the trial, charge was framed against the accused persons under sections 409/420/467/468/471/109 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 present in court and they pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 13 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 they declined to adduce any DW. After concluding the trial, the Divisional Special Judge, Khulna

by impugned judgment and order convicted the accused persons and sentenced them as stated above against which they filed the above-mentioned appeals.

P.W. 1 Sub-Inspector Khalid Hossain and P.W. 2 Md. Rabiul Islam was tendered by the prosecution and declined by the defence.

P.W. 3 Haripada Biswash is the Inspector of Police (retired). He stated that at the time of occurrence, he was posted in the Office of the CID, Satkhira. Inadvertently he wrote in column No. 3, Khulna in place of Satkhira. He was appointed as Investigating Officer of the case. During the investigation with the prior approval of the Deputy Commissioner, Satkhira, he interrogated the staff of the record room of the Office of the Deputy Commissioner, Satkhira and all the staff except MLSS Mahabubur Rahman co-operated with him. Thereafter he handed over the documents to the Investigating Officer appointed by the Anti-Corruption Commission. During cross-examination, he denied the suggestion that he did not visit the record room.

P.W. 4 Sheikh Hamim Hasan is the Additional Deputy Commissioner (Revenue). He stated that on 03.07.2012 he was posted at Satkhira as Deputy Commissioner(Revenue). He was in charge of the record room of the Office of the Deputy Commissioner, Satkhira. The Anti-Corruption Commission issued a requisition for the duty card of the staff of the records room who discharged duty from 2002 to 2004. Thereafter, he sent a list of the staff who discharged duty in the records room by Memo No. 1497 dated 03.07.2012 to the Anti-Corruption Commission. He proved the attested copy of the list of the staff (total 12 pages) as exhibit-1 series. During cross-examination, he stated that he sent the list of 7 staff of the record room.

P.W. 5 Md. Saydur Rahman is the Deputy Secretary of the Office of the Prime Minister. He stated that on 23.08.2005 he was discharging his duty as Magistrate, First Class, Satkhira. At that time at the instruction of the DC, Satkhira, he inquired about the forgery of the SA Khatian Nos. 312 and 318 of Mutation case 162/65-66 and 114/65-66 under Parshemary Mouza of Shyamnagar Thana. After inquiry, he submitted the report on 08.03.2006 stating that Mahabubur Rahman, MLSS was involved in the forgery. He proved the report as exhibit-2 and his signature on the report as exhibit-2/1. During cross-examination on behalf of the appellants, he stated that he did not make any recommendation against any staff except Mahabub.

P.W. 6 Md. Abdul Ahad is the Office Assistant of the Office of the Deputy Commissioner, Satkhira. He stated that on 03.07.2012 he

discharged his duty as MLSS of the Deputy Commissioner. Satkhira. On that day at 4.00 pm, the Additional Deputy Commissioner seized documents and prepared the seizure list. He proved the seizure list as exhibit-3 and his signature on the seizure list as exhibit-3/2. He signed the Zimmanama. He proved the Zimmanama as exhibit-4 and his signature as exhibit-4/1. Defence declined to cross-examine P.W.6.

P.W. 7 Md. Abdul Khaleque was the Head Assistant(Retired) at the Office of the Deputy Commissioner, Satkhira. He stated that on 03.07.2012 at 4 pm the Officer of the Anti-Corruption Commission seized documents from the Office of the Deputy Commissioner, Satkhira presented by Sheikh Shahadatul Karim of VP section. He signed the seizure list. He proved his signature on the seizure list as exhibit-3/2. He signed the Zimmanama. He proved his signature on the Zimmanama as exhibit-4/2.

P.W. 8 Sheikh Shahadatul Karim is the Tracer of VP section of the Deputy Commissioner, Satkhira. He stated that on 03.07.2012 he presented the list of censure, miscellaneous cases, miscellaneous case register, etc to the office of the Anti-Corruption Commission which was seized. The documents were subsequently given to his custody. He proved his signature on the seizure list as exhibit-3/2. He proved his signature on the Zimmanama as exhibit-4/3. He proved the seized alamats as material exhibit-V/VI. During cross-examination, he stated that he presented the seizure documents and took custody. He is now discharging his duty in the VP section. He presented the seized documents.

P.W. 9 G.M. Mofazzal Kabir is the Office Assistant of the UNO, Shyamnagar. He stated that on 20.06.2012 he discharged his duty as Office Assistant of the Office of the Assistant Commissioner (Land), Shyamnagar. On that day, the Officer of the Anti-Corruption Commission seized documents. He presented those documents. After preparing the seizure list those documents were handed over to his custody. He proved the seizure list as exhibit-3/Ka and his signature as exhibit-3(Ka)/1. He proved the Zimmanama as exhibit-4(Ka) and his signature as exhibit-4Ka/1. He proved the seized documents as material exhibits 7, 8 and 9. During cross-examination, he stated that one Sajeeb is now discharged from his post at the Office of the Assistant Commissioner (Land), Shyamnagar.

P.W. 10 Motiar Rahman, Sipahi No. 320(retired), stated that on 20.06.2012 he was posted at Anti-Corruption Commission, Khulna. On that day, the investigating officer Abdus Sabur seized the documents presented by the Office Assistant Mofajjol Kabir and those documents

were handed over to the custody of Mofajjal Kabir. He proved the seizure list and the Zimmanama (exhibit-7gha). He proved his signature as exhibit-3/Ka/2 and 4(ga)/4. During cross-examination, he stated that at the instruction of Officer Abdus Sabur, he signed the seizure list.

P.W. 11 Muhammad Mokhlesur Rahman, Constable No. 200 of the Anti-Corruption Commission, stated that on 20.06.2012 he was posted with the Anti-Corruption Commission, Khulna. On that day, at 4.30 pm in his presence, Mofajjol Kabir presented documents to Md. Sabuj, an Officer of the Anti-Corruption Commission and seized those documents. The seized documents were handed over to the custody of Mr. Kabir. He signed the seizure list and Zimmanama. He proved his signatures as exhibit-3/ka/3 and 7/Ka/3. During cross-examination, he stated that he signed as per instruction of the Officer Abdus Sabur. He could not remember the contents of the seizure list.

P.W. 12 ABM Abdus Sabur is the DAD, Anti-Corruption Commission, Combined District Office, Khulna. He stated that from 2012 to 2013 he was posted at the Office of the Anti-Corruption Commission, Khulna. On 13.05.2012 he was appointed as investigating officer. He perused the FIR and the records. He prepared the seizure lists on 20.06.2012 at 4.30 pm, on 03.07.2012 at 4.30pm, on 27.06.2012 at 10.00 am, on 03.07.2018 at 2.15.00pm, on 27.06.2012 at 10.30 am and handed over the documents. He recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898 and submitted the memo of evidence against the accused persons. He proved the memo dated 14.03.2013. He proved his signature on seizure lists including the seizure list dated 20.06.2012 as exhibit-3Ka/4. He proved his signatures on the zimmanama as exhibit-3/4 and 4/4. During cross-examination, he stated that Saydur Rahman was the Magistrate, First Class. He did not record his statement. He could not say the names of staff who were discharging duty in 1974-1975. In the confession made by co-accused Mahabub, he admitted that he had done the job. He denied the suggestion that he submitted charge sheet without any investigation or under the instruction of the local Member of the Parliament or he deposed falsely.

P.W. 13 Md. Nawsher Ali was the ASP (retired). He stated that on 30.11.2006 while he was discharging his duty as ASP, CID, Khulna Zone he recorded the FIR. On 30.11.2006, while he was discharging his duty as Officer-in-Charge, Sadar Thana, Satkhira he recorded the FIR. He proved the FIR as exhibit-10 and his signature on the FIR form as exhibit-10/1. The informant Mostafa Abdul Halim, ASP, CID, Khulna already died for which he proved the FIR. He proved the FIR as exhibit-11 and the signature of Mostafa Abdul Halim as exhibit-11/1.

Abdul Halim signed the FIR. He affirmed that in the meantime accused Mahabubur Rahman died and the proceeding so far relating to accused Abdur Razzak has been stayed by the High Court Division.

The learned Advocate Mr. Nitai Roy Chowdhury appearing on behalf of the appellants Shamima Akter, Shemol Kumar Acharjee Begum Jesmin Nahar and Md. Asraf Ali submits that the accused persons were not named in the FIR and there is no evidence against the accused persons and the trial court illegally convicted the accused persons on the ground that at the relevant time, they were discharging their duty in the records room of SA section of the Office of the Deputy Commissioner, Satkhira. He prayed for setting aside the impugned judgment and order passed by the trial court.

The learned Advocate Mr. Sk. A.K.M. Moniruzzaman appearing on behalf of the appellant Selima Sultana submits that the accused Selima Sultana was the Office Assistant-cum-Typist of the records room of SA section and she was not named in the FIR and none of the prosecution witnesses implicated her in the alleged forgery and the trial court without any iota of evidence convicted her. He prayed for setting aside the impugned judgment and order passed by the trial court.

The learned Advocate Mr. Sharan Chandra Talukder appearing on behalf of the appellant Md. Hossain Ali submits that accused Md. Hossain Ali was the MLSS of the records room of the Deputy Commissioner, Satkhira and in the report (exhibit-2) submitted by P.W. 5, it has been mentioned that he was bonafide discharging his duty and there is no recommendation in the enquiry report (exhibit-2) against the accused Md. Hossain Ali and the trial court without any evidence convicted him. He further submits that the FIR named accused persons Ranjit Kumar, Sirajul Islam, Tarapada Sarker and Abul Kalam were not sent up in the charge sheet and the accused persons were falsely implicated in the case at the instruction of the local Member of Parliament in place of the FIR named accused persons. He prayed for setting aside the impugned judgment and order passed by the trial court.

The learned Advocate Mr. A.K.M. Fazlul Haque appearing on behalf of respondent No. 2, Anti-Corruption Commission, in all the appeals submits that the accused persons were the staff of the record room of the SA section of the Office of the Deputy Commissioner, Satkhira and in connivance with the co-accused Abdur Razzak and Mahabub made a false entry of Mutation Case No. 298/66-67 in the mutation register and illegally mutated 12.83 decimals of land (vested property) in the name of Asraf Ali and Abdus Salam and thereby

committed offence under sections 409/420/467/468/109 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947 and prosecution proved the charge against the accused persons beyond all reasonable doubt. He prayed for the dismissal of the appeals.

I have considered the submission of the learned Advocates of both parties, perused the evidence, impugned judgment and order passed by the trial court and the records.

At the very outset, it is noted that during the trial co-accused SK Mahabubur Rahman died and the proceedings so far related to accused Abdur Razzak Gazi have been stayed by the High Court Division.

On perusal of the evidence, it reveals that the accused Shamima Akhter was the Record Keeper (In charge), Shemol Kumar Acharjee was the Office Assistant of the records room and the accused Begum Jesmin Nahar was the Office Assistant of the records room, the accused Afser Uddin was the Office Assistant, VP section, the accused Selima Sultana was the Office Assistant-cum-Typist of the records room and accused Md. Hossain Ali was the MLSS of the records room, all of the Office of the SA section, Office of the Deputy Commissioner, Satkhira.

To prove the charge the prosecution examined 13 witnesses in the case P.Ws. 1, 2 and 6 were tendered by the prosecution and P.Ws. 6 to 11 are the witnesses of the seizure list. P.W. 3 was the initial investigating officer and P.W. 12 Deputy Assistant Director, ACC Combined District Office, Khulna after completing the investigation, submitted charge sheet. P.W. 4 Sheikh Hamim Hossain sent the list of the employees of the SA section to the investigating officer and P.W. 5 Md. Saidur Rahman inquired about the alleged forgery and submitted a report (exhibit-2) and P.W. 13 Md. Nowshed is the recording Officer of the case.

On perusal of the evidence, it appears that the appellants were not named in the FIR. In the FIR, 6 accused persons including Abur Razzak Gazi and Sk Mahabubur Rahman along with 4 other accused persons were named and the investigating officer submitted the final report in favour of FIR named accused persons Ranjeet Kumar Acharjee, Sirajul Islam Mullah, Tarapada Sharkar and Abul kalam and submitted charge sheet against the appellants. It reveals that the inquiry report submitted by P.W. 5 (exhibit-2) is the sole basis of the prosecution case and in the inquiry report dated 08.03.2006(exhibit-2), P.W. 5 Saydur Rahman, Magistrate, First Class, Satkhira made a recommendation against only co-accused Mahabubur Rahman,

MLSSS, Records Room. The relevant part of the inquiry report dated 08.03.2006 is quoted below;

“জনাব মাহাবুবুর রহমান এম এল এস এস রেকর্ড রুম শাখায় কর্মরত থাকাকালে বাইরের বিভিন্ন লোকের দারা লাভবান হয়ে শ্যামনগর উপজেলায় পার্শ্বমারী মৌজার এস এ ৩১৩/৩১৮ নং খতিয়ান বইতে বর্ণিত পাতা দুটিতে জাল সৃজনে সহায়তা করার অপরাধ করেছেন। বিগত ১২.৮.২০০৫ বা ১৩.০৮.২০০৫ খ্রিঃ এর যে কোন সময়ে তিনি উক্ত পাতা দুটিতে লাল কালি দ্বারা ক্রস দিয়েছেন। তিনি তার স্বেচ্ছা প্রনোদিত বক্তব্যে তা স্বীকার করেছেন। তিনি সরাসরি জড়িত। তিনি অপরাধ করেছেন।

২। জনাব মোঃ হোসেন আলী এম এল এস এস এসএ গোড়াউনের রক্ষক, তিনি সরলতা ও নিষ্ঠার সাথে দায়িত্ব পালন করেন। তবে জনাব মাহাবুবুর রহমান তার গোড়াউনের বই নিয়ে ঐ রূপ করতে পারেন তা তিনি ভাবতে পারেন নি।”

On perusal of the evidence, it reveals that none of the prosecution witnesses named the appellants in their evidence and in the inquiry report (exhibit-2) nothing has been stated by P.W. 5 regarding their involvement in the alleged forgery. During the inquiry, accused Sk. Mahabubur Rahman admitted that he was involved in the alleged forgery. No evidence was adduced during the trial of the case that the appellants aided or abetted in the forgery done by the co-accused Sk Mahabubur Rahman. During the trial, the handwriting on the register of S.A. Khatian was not sent to the handwriting expert to ascertain that the appellants illegally tempering the records inserted the said mutation case in the S.A. register. In the inquiry report, it has been specifically mentioned that the co-accused Sk. Mahabubur Rahman forged the Mutation Case No. 298/66-67 inserting the names of Ashraf Ali and Abdus Salam in the register of SA Khatian.

Because of the above evidence, findings, observation and proposition, I am of the view that the prosecution failed to prove the charge against the accused beyond all reasonable doubt and the trial court without assessment and evaluation of the evidence of the prosecution witnesses wrongly arrived at a concurrent finding of facts as to the guilt of the appellants namely, (1). Shamima Akhter (2). Shyamal Kumar Acharjee (3). Begum Jesmin Nahar (4). Afser Uddin (5). Selima Sultana and (6). Md. Hossain Ali.

I find merit in the appeals.

In the result, all appeals are allowed.

The impugned judgment and order passed by the trial court against the accused persons (1). Shamima Akhter (2). Shyamal Kumar Acharjee (3). Begum Jesmin Nahar (4). Afser Uddin (5). Selima Sultana and (6). Md. Hossain Ali is hereby set aside.

Send down the lower Court's record at once.