

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

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 2897 of 2023.

Kazi Imdadul Haque
..... appellant

-Versus-

The State and another
..... Respondent

Mr. Mohammad Saifullah Mamun,
Advocate
... ..for the appellant

Mr. Mohammad Ashraf Uddin Bhuiyan,
Advocate

.....For the respondent No. 2 ACC

Mr. S.M. Golam Mostofa Tara, DAG with
Mr. A. Monnan, AAG
... For the respondent

**Heard on: 28.02.2024, 21.04.2024, 28.04.2024,
13.05.2024**

Judgment on: 27.05.2024

This appeal under Section 10 of the Criminal Law Amendment Act, 1958 is directed challenging the legality and propriety of impugned judgment and order of conviction and sentence dated 24.08.2003 passed by the Divisional Special Judge, Khulna in Special Case No. 10 of 2003 arising out of Khalishpur P.S. Case No. 5 dated 06.05.1995, G.R. No. 436 of 1995 convicting the appellant under section 409 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947 and sentencing him thereunder to suffer rigorous imprisonment for 05(five) years and fine of Tk. 50,000, in default, to suffer

imprisonment for two years and convicting the appellant under section 468 of the Penal Code, 1860 and sentencing him thereunder to suffer rigorous imprisonment for 5 (five) years and to pay a fine of Tk. 10,000 (ten thousand), in default, to suffer imprisonment for 06 (six) months which will run concurrently.

The prosecution case, in short, is that the accused No. 1. former Manager Abdul Hai Ahmmad, 2. Cashier Md. Serajul Islam, 3. Stenographer Manik Lal Odhikari and 4. LDA-Cum-Typist Manuranjan Das, Printing, Writing Materials and Publications Department, Khalishpur, Khulna in connivance with each other and misusing the power forged the signature of P.W. 6 Md. Jashim Uddin, Assistant Controller of Printing, Writing Materials and Publications Department, Dhaka Office on the letter dated 02.06.1992 and distributed the form materials showing false delivery to fake person LDA-Cum-Typist Abdus Satter based on a fake letter of the authority of the Additional Deputy Commissioner, Barisal through Monuranjan Das and Cashier Serajul Islam. The accused persons in connivance with each other creating forged documents distributed form materials to the fake person Abdus Satter and misappropriated the forms and other materials valued at Tk. 49,999.99.

During the inquiry, the handwriting expert opined that the signature of P.W. 6 Md. Jashim Uddin, Assistant Controller, Admin-1, contained in memo No. 2458/2(6) dated 02.06.1992 and Md. Abdul Khaleque, Additional Deputy Commissioner, Barisal on the allotment letter contained in memo No. 104/Zai dated 09.06.1992 are fake and forged. The Additional Deputy Commissioner, Barisal did not send LDA Abdus Satter as his representative to receive forms of the Printing, Writing Materials and Publications. The accused persons Abdul Hai Ahamed, Serajul Islam, Manik Lal Adhikari and Monuranjan Das in connivance with each other fraudulently forged the allotment letter dated

09.06.1992 and letter dated 02.09.1992. The accused persons distributed the Printing and Forms Materials valued at Tk. 49,999.99 to a fake person.

P.W. 1 informant S.I. Abul Kashem Mollah took up the investigation of the case and during the investigation, total 6 investigating officers were appointed and after completing the investigation P.W. 12 K.M. Mesbah Uddin submitted charge sheet against the accused (1) Abdul Hai Ahmmad (2) Serajul Islam (3) Manik Lal Adhikari and (4) appellant Kazi Imdadul Haque under sections 419/420/109/409/467/468 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947 and accused Monuranjan Das was not sent up in the charge sheet. After that, the case record was sent to the Senior Special Judge, Khulna who sent the case to the Divisional Special Judge, Khulna. In the meantime, the state withdrew the case against the accused Serajul Islam and Manik Lal Adhikari.

During the trial, the charge was framed under sections 409/468/467/109 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947 against the accused Abdul Hai Ahmmad and accused Kazi Imdadul Haque which was read over and explain to the accused Abdul Hai Ahmmad and he pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 12 witnesses to prove the charge against the accused persons. After examination of the prosecution witnesses, the accused Abdul Hai Ahmmad was examined under section 342 of the Code of Criminal Procedure, 1898 and he declined to adduce any DW. The trial court after concluding the trial, by impugned judgment and order dated 24.08.2003 convicted the accused Kazi Imdadul Haque as stated above and acquitted accused Abdul Hai Ahmmad against which the appellant preferred this appeal.

P.W. 1 Md. Abul Kashem Mollah is the Sub-Inspector of Police(Rtd.). He stated that on 03.05.1995 he was posted at the District Bureau of Anti-Corruption, Khulna as Assistant Inspector. Inspector Mohidul Islam after inquiry submitted the report to the Bureau of District Anti-Corruption, Khulna. After that, he was transferred and the record was handed over to him and after getting approval from the Bureau of Anti-Corruption, he lodged the FIR against 4(four) accused persons. The accused Abul Hai Ahmmed instructed cashier Md. Serajul Islam on 05.06.1992 to supply the stationery goods amounting to Tk. 50,000 following a memo dated 02.06.1992 issued by the Md. Jashim Uddin, Assistant Controller, Forms and Publication, Dhaka and following the said memo Store Keeper Manik Lal Adhikari and LDA-Cum-Typist Monuranjan Das distributed the stationary goods on 10.06.1992 following the instruction of accused Md. Serajul Islam to LDA accused A. Satter. During the inquiry, the handwriting expert found that the signature of the Md. Jashim Uddin, Assistant Controller, Directorate of Forms and Publications on memo No. 2458/2(6) dated 02.06.1992 is not identical and the said memo dated 02.06.1992 is fake and forged. The Additional District Commissioner, Barishal Md. Abdul Khaleque did not issue the requisition dated 09.06.1994 contained in memo No. 105 appointing LDA Abdus Satter as his representative. The accused persons creating forged documents misappropriated the forms and publications material valued at Tk. 49,999.99. He proved the FIR as exhibit-1 and his signature on the FIR as exhibit-1/1. He took up investigating of the case following the instruction of the District Anti-corruption Officer, Khulna. During the investigation, he recorded the statement of witnesses, visited the place of occurrence and thereafter he was transferred. He handed over the records to the Assistant Inspector Komal Kumar Roy. During cross-examination, he stated that based on the inquiry report submitted by Mohidul Islam, he lodged the FIR. The allotment letter issued

from the Tajgaon office in the name of Deputy Commissioner, Barishal was sent personally, not by post. The accused informed that the allotment letter was sent by registered post. He demanded the envelope from the accused but he could not give the envelope. He interrogated Abdul Hai, Monuranjan Das, Manik Lal Adhikari and Serajul Islam. He could not remember whether he interrogated any witness.

P.W. 2 Komal Kumar Roy is the Assistant Inspector of the Bureau of District Anti-Corruption, Khulna. He stated that he took up the investigation of the case on 11.12.1995. During the investigation, he seized the alamat. On 26.12.1995 he seized alamat from the UDA Hasmat Ali Chowdhury of the Printing, Stationery, Forms and Publication Department, Area Office, Khulna. He proved the seizure list as exhibit-2 and his signature as exhibit-2/1 and handed over all the alamat to Md. Hasmat Ali Chowdhury and signed the seizure list. Thereafter, he was transferred and he handed over the records to Assistant Inspector Ashraf Ali.

P.W. 3 Md. Mofizul Islam is a Warrant Officer(Rtd.). He stated that on 20.01.1994 he was discharging his duty as Inspector of DAB, Khulna and he was appointed as Investigating Officer. He proved the ER as exhibit 3. On 14.02.1994 he seized documents from Abul Kashem Mia. He proved his signatures on the seizure list as exhibit 2 (Ka) and 2(Kha)/9. He proved the allotment letter dated 02.06.1992 signed by Jashim Uddin as exhibit-4, receipt register as exhibit-5, letter of authority dated 09.06.1992 as exhibit-6, requisition letter as exhibit-7, one copy photograph as exhibit-8, acknowledgement receipt of the goods as exhibit-9, note sheet as exhibit-10, issue voucher as exhibit-11, specimen signature as exhibit-12, memo No. 502 dated 08.12.1992 as exhibit-13, letter of representative dated 09.06.1992 as exhibit-14, issue voucher as exhibit-15, specimen signature (Bikash

Chowdhury) as exhibit-16, the acknowledgement receipt of goods letter No. 1657 as exhibit-17, photo of Bari Akand as exhibit-18, memo No. 2175, 2449 and 2450 as exhibit-19 series. On 15.06.1994 he also seized documents from the office of the Ohiduzzaman, Deputy Controller, Forms and Stationery Office, Tajgaon. He proved his signature on the Zimmanama as exhibit 2 (Ka) and 2(Ka)/1. He proved two seized memos as exhibits 20 and 20(Ka). On 10.02.1994 and 09.06.1994 he visited the place of occurrence. He sent memo No. 1159 dated 02.06.1992 allegedly signed by Jashim Uddin, Assistant Controller (3 pages) and a forged letter of authority allegedly issued by Abdul Khaleque, Additional Deputy Commissioner, Barishal (4 pages) for report of the handwriting expert, CID, Dhaka. The handwriting expert of CID vide memo No. 774 dated 24.10.1994 opined that the signature of Jashim Uddin, Assistant Controller on the allotment letter dated 02.06.1994 and the signature of the Additional District Commissioner, Barisal on the letter of authority dated 09.06.1994 are forged. He proved the report of the handwriting expert as exhibit-21. He proved the specimen signature of Jashim Uddin on 3 pages as exhibit-22-22(Kha). He proved the specimen signature of Abdul Khaleque, ADC, Barishal on 4 pages as exhibit-22(Ga) - 22(Cha). He proved the extended 11 vouchers as exhibit-23 series. After completing the inquiry, he submitted the report on 22.11.1994 to lodge the FIR against the accused Manager Abdul Hai Ahammed, Cashier Serajul Islam, Storekeeper Manik Lal Adhikari and LDA cum-typist Sree Monuranjan Das. Sree Monoranjan Das noted the allotment letter in the register but he could not remember whether he obtained the envelope. As per Register, the Manager received the letter on 06.06.1992 and marked the same to Seraj who had given the note to supply the goods to Abdus Satter Mia. In the letter of authority, a photo was attested and his photo and the signature were also attested. Seraj was responsible for examining the photo and signature. On the

same date, Manik Lal Adhikari supplied the goods. The fake representative of Barishal came on 10.06.1992 and on that day Seraj had given the note. The signature of Jashim Uddin of Dhaka Office is not kept in the Area Office, Khulna. On 02.06.1994 he also seized two admitted signatures of Jashim Uddin and sent to handwriting expert. He proved the signatures as exhibit-19(Ka)/19(Kha). He denied the suggestion that those two signatures are identical to the disputed signatures.

P.W. 4 Shafiqul Islam is the Store Keeper, Forms and Stationary Office, Khalishpur, Khulna. He stated that on 14.02.1994 he was discharging his duty as LDA Cum-Typist in the said office. On that day, the inquiry officer seized the alampats from Manager Abul Kashem. He signed the seizure list. He proved his signature on the seizure list (2 Ka) as exhibit 2 (Ka)/2.

P.W. 5 Ashraf Ali Khan is the D.I.O, Bangladesh Police, Special Branch, Khulna. He stated that on 22.01.1996 he was discharging his duty as Assistant Inspector of DAB, Khulna. On that day, he took up investigation of the case from Investigating Officer Komal Kumar Roy. During the investigation, he recorded the statement of 07 witnesses under section 161 of the Code of Criminal Procedure, 1898 and visited the place of occurrence. He submitted the memo of evidence against the accused Abdul Hai, Serajul Islam and Manik Lal Adhikari and thereafter he was transferred.

P.W. 6 Md. Jashim Uddin is the Assistant Controller (Rtd.) Forms and Publication Tejgaon, Dhaka. He stated that on 02.06.1992 he was discharging his duty in the said office. He did not sign the allotment letter (exhibit-4) and his signature was forged. During the inquiry, the inquiry officer sent his 3 signatures to the handwriting expert to compare the alleged signatures on

exhibit 4. He proved his signatures as exhibit-22, 22(Ka) and 22(Kha). The forms of exhibit 4 are not genuine.

P.W. 7 Abu Sayed Talukder is the Office Assistant Cum-Typist, Forms and Publications Directorate, Area Office, Khulna. He stated that on 26.12.1995 he was posted in that office. On that day, the investigating officer seized the alamats in his presence from UDA Hasmat Ali. He proved his signature on the seizure list (exhibit-2) as exhibit-2/3 and the seized alamats were handed over to Hasmat Ali (now dead). He proved the seized alamats (3 registers) as exhibit-24 series.

P.W. 8 Md. Anwar Hossain is the UDA of the Forms and Publication Office, Tajgaon, Dhaka. He stated that on 02.6.1992 he was discharging his duty in the said office. The allotment letter (exhibit-4) was not issued from his office. The allotment letter is not sent through post. Exhibit 4 is forged and the same was not issued from his office. He denied the suggestion that the allotment letter was sent from his office by registered post.

P.W. 9 Md. Majnul Ahasan was tendered by the prosecution and declined by the defence.

P.W. 10 Md. Abul Hossain is the Inspector, Dhaka Force-2, BAC, Dhaka. He stated that on 29.07.1998 he was posted in the office of the DAB, Khulna in the same post and on that he took up the investigation of the case from Assistant Inspector Rais Uddin. During the investigation, on 23.09.1998 he recorded the statement of M.A. Sobhan, TNO, Zajira, Shariatpur and Account Assistant Md. Selim Mia. Subsequently, he was transferred and he handed over the records to Inspector K.S. Mejbah Uddin.

P.W. 11 Md. Mosharaf Hossain is a retired Head Assistant at the Collectorate Office, Barishal. He stated that on 26.06.1994, he was posted there. On that day the Inquiry Officer seized alamats

from Office Assistant Salma Haque of the Establishment Branch. He signed the seizure list. He proved his signature as exhibit 2 (Ga) and (Ga)/1. He proved the opinion of the Additional District Magistrate dated 05.03.1994 and the application for leave of Additional District Commissioner(General) Abdul Khaleque as exhibits 25, 26 and 27.

P.W. 12 K.M. Mesbah Uddin is the Inspector of the Bureau of Anti-Corruption, Sunamganj. He stated that on 26.06.1999 he took up investigation of the case from Inspector Abul Hussain. After investigation, he submitted the memo of evidence against Manuranjan Das, Manik Lal Adhikari, and M.S. Mirajul Islam and after getting approval, he submitted charge sheet. He proved the approval as exhibit-28.

The learned Advocate Mr. Mohammad Saifullah Mamun appearing on behalf of the convict petitioner submits that the accused is neither named in the FIR nor any prosecution witness mentioned his name in their evidence and he did not sign the power of authority dated 09.06.1992 (exhibit-6) allegedly issued by the Additional Deputy Commissioner, Barishal. The handwriting expert in his report (exhibit-21) opined that the signature of P.W. 6 Jashim Uddin, Assistant Controller of Forms and Publication, Tajgaon, Dhaka on the allotment letter dated 02.06.1992 (exhibit-4) is not identical to the admitted signature of P.W. 6. The accused Abdul Hai Ahamed, accused Md. Serajul Islam, accused Manik Lal Adhikari and accused Monuranjan Das were serving in the Office of the Printing and Publication Department, Area Office, Khulna and the goods were delivered on 10.06.1992 by them. He further submits that the accused LDA Monuranjan Das was not sent up in the charge sheet, the prosecution against the Store Keeper Manik Lal Adhikari and Cashier Serajul Islam had been withdrawn by the State and the accused Abdul Hey Ahamed was acquitted by the trial court. He

also submits that the accused Kazi Imdadul Haque is a Stenographer of the Office of UNO, Zajira and there is no iota of evidence against him. The trial court without proper assessment and evaluation of the evidence illegally convicted the appellant. He prayed for allowing the appeal.

The learned Advocate M/S. Chowdhury Nasima appearing on behalf of respondent No. 2 ACC submits that the trial court convicted the accused considering the letter of withdrawal of prosecution against the accused Abdul Hai Ahamad issued by the Director General of the Bureau of Anti-Corruption holding that the letter of authority issued by Abdul Khaleque, Additional Deputy Commissioner(General) in favour of Abdus Satter Bhuiyan is fake and the photograph of accused Kazi Imdadul Haque was attested with the letter of authority (exhibit-6). The prosecution proved the charge against the accused beyond all reasonable doubt and the trial court on proper assessment and evaluation of the evidence legally passed the impugned judgment and order. He prayed for the dismissal of the appeal.

I have considered the submission of the learned Advocate Mr. Mohammad Saifullah Mamun who appeared on behalf of the appellant and the learned Advocate Ms. Chowdhury Nasima who appeared on behalf of respondent No. 2 ACC, perused the evidence, impugned judgment and order passed by the trial court and the records.

At the very outset, it is noted that the accused Monuranjan Das was not sent up in the charge sheet and the prosecution against the accused Serajul Islam and Manik Lal Adhikari had been withdrawn by the state and the accused Abdul Hai Ahamed was acquitted by the trial court. During the trial of the case, the letter issued by Major General M.A. Motin, Director General, Bureau of

Anti-Corruption withdrawing the prosecution against the accused persons was not proved.

On perusal of the evidence, it appears that P.W. 6 Md. Jashim Uddin, Assistant Controller, Forms and Publications Department, Tajgaon, Dhaka stated that he did not issue the allotment letter dated 02.06.1992(exhibit-4) and the same is forged. During the trial, no envelope was proved by the prosecution to show that the allotment letter dated 02.06.1992 (exhibit-4) was sent by post. Furthermore, the handwriting expert in his report(exhibit-21) contained in memo No. 774 dated 24.10.1994 opined that the signatures of Jashaim Uddin on the allotment letter dated 02.06.1992(exhibit-4) and signature of Abdul Khaleque, Additional Deputy Commissioner(General), Barishal on the letter of authority dated 09.06.1992 (exhibit-6) are forged. Therefore, I am of the view that the forms and publication materials were delivered based on the forged letter of authority dated 09.06.1992 (exhibit-6) and the fake allotment letter dated 02.06.1992 (exhibit-4) by accused Manik Lal Adhikari, Store Keeper, Forms and Publications Department, Area Office, Khulna and Manuranjan Das, LDA-Cum-Typist of the said office on the recommendation of accused Serajul Islam. But the accused Monuranjan Das was not sent up in the charge sheet and prosecution against the accused Manik Lal Adhikari and accused Serajul Islam had been withdrawn by the State.

It has been alleged that the photograph of the accused Kazi Imdadul Haque was attested with the letter of authority dated 09.06.1992(exhibit-6). During the investigation, the alleged signature of Kazi Imdadul Haque on the letter of authority dated 09.06.1992 (exhibit-6) was not sent for the report of the handwriting expert to ascertain his signature. Mere attachment of a photograph of the accused Kazi Imdadul Haque with the letter of authority dated 09.06.1992(exhibit-6) is not proof that he received

the goods from the Office of the Forms and Publications Department, Khulna unless his alleged signatures on the letter of authority dated 09.06.1992 (exhibit-6) are found identical to his admitted signature.

No evidence has been adduced by the prosecution that the allotment letter dated 02.06.1992 (exhibit-4) allegedly issued by the P.W. 6 and letter of authority (exhibit-6) dated 09.06.1992 were sent by post. Therefore, I am of the view that the said allotment letter dated 02.09.1992 (exhibit-4) and letter of authority dated 09.06.1992 (exhibit-6) were forged by the concerned staff of the Forms and Publications Department, Khulna and the appellant is a scapegoat who is a stenographer of the office of UNO, Zajira, Shariatpur.

In view of the above evidence, findings, observation and proposition, I am of the view that the prosecution failed to prove the charge against the accused Kazi Imdadul Haque beyond all reasonable doubt.

The impugned judgment and order passed by the trial court against accused Kazi Imdadul Haque are hereby set aside.

I find merit in the appeal.

In the result, the appeal is allowed.

Send down the L.C.R at once.