

**IN THE SUPREME COURT OF  
BANGLADESH**

**HIGH COURT DIVISION**

**(CRIMINAL APPELLATE JURISDICTION)**

**Present:**

**Mr. Justice Md. Shohrwardi**

**Criminal Appeal No. 3187 of 2002**

Md. Khasiar Rahman  
..... appellant

-Versus-

The State and another  
..... Respondent

Mr. Farhad Ahmed, Advocate  
... ..For the appellant

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

... For the State

Mr. ASM Kamal Amroohi Chowdhury, Advocate  
..... For the respondent No.2(ACC)

**Heard on 17.01.2024**

**Judgment delivered on 18.01.2024**

This appeal under section 10 of the Criminal Law Amendment Act,1958 has been preferred challenging the legality of the impugned judgment and order of conviction and sentence dated 14.10.2002 passed by Special Judge, Kushtia in Special Case No. 13 of 2001 arising out of Jibannagar Police Station Case No. 01 dated 02.02.1995, G.R. No. 2 of 1995 convicting the appellant under sections 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 02 (two) years and to pay a fine of Tk. 50,000, in default, to suffer rigorous imprisonment for 03(three) months.

The prosecution case, in short, is that the accused Md. Khasiar Rahman is a member of Uthali Union Parishad under Jibonnagar Thana, Chuadanga. He was the Chairman of 05(five) project committees for the year 1989-1990 for repairing roads namely, 1. Dhopakjali to Madhabkhali road repair project 2. Madhabkhali BDR camp to Dhopakjali Natunpara road repair project 3. Dhopakjali Dayra Sharif earth felling project in front of Daira Sharif 4. Santushpur to Dhopakjali road repair project and 5. Madhabkhali to Kalagram road repair project. The accused had withdrawn total 4215 kgs of wheat for repairing the project No.1 under D.O. No. 9827520 dated 28.05.1989, 600 kgs of wheat for the project No. 2 under D.O. No. 9827511 dated 27.05.1989, 600 kgs of wheat for repairing the project No. 3 under D.O. No.9827562 dated 30.05.1989, 3358.500 kgs of wheat for repairing the project No. 4 under D.O. No. 9827527 dated 28.05.1989 and 877 kgs of wheat for repairing the project No. 5 under D.O. No. 22243 dated 12.12.1989. The accused withdrew total 9650.500 kgs of wheat for repairing the said projects. The value of 01(one) kg of wheat was Tk.5.65 and the total value of 9650.500 kgs of wheat was Tk. 54,525.33. The accused did not submit the master roll of the said projects and during the inquiry, the allegation of misappropriation of the said wheat by the accused was proved.

The Assistant Inspector Md. Ashraf Ali Khan, District Anti-Corruption Bureau lodged the FIR against the accused under section 409 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947 and he was appointed as investigating officer and during the investigation, he was transferred. During the investigation, the investigating officer recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898, seized the documents and after completing the investigation submitted a memo of evidence against the accused on 30.12.1995. Subsequently, he was transferred and on 07.01.1996 handed over the records to Assistant Inspector Samsul Haque who was appointed as investigating officer. After completing the investigation, he submitted charge sheet against the accused on 28.09.1996

under section 409 of the Penal Code, 1860 and read with section 5(2) of the Prevention of Corruption Act, 1947.

Thereafter, the learned Magistrate was pleased to send the case to the Senior Special Judge, Chuadanga on 04.11.1996. The Senior Special Judge, Chuadanga took cognizance of the offence against the accused under section 409 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947. During the trial, the charge was framed on 03.06.1997 against the accused under section 409 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947 which was read over and explained to the accused and he pleaded not guilty to the charge and claimed to be tried following law. The prosecution examined 10 witnesses to prove the charge against the accused. After examination of the prosecution witnesses, the accused was examined under section 342 of the Code of Criminal Procedure, 1898 and he declined to adduce any DW. After concluding the trial, the trial court by impugned judgment and order convicted the accused and sentenced him as stated above against which he preferred the instant appeal.

P.W. 1 Md. Ashraf Ali Khan is the informant as well as the investigating officer. He stated that on 02.02.1995 he was posted at the District Anti-Corruption Bureau, Chuadanga as Assistant Inspector. He lodged the FIR. Md. Abdul Baki, Inspector of the Bureau of Anti-Corruption, Chuadanga inquired about ER No. 29 of 1993 against the accused Md. Khasiar Rahman who was a member of the Uthali Union Parishad. The accused had withdrawn the wheat in place of rice under the "Food for Work Program" of Uthali Union Parishad. He had withdrawn 4,215 kgs of wheat for repairing the Dhopakhali to Madhabkhali road repair project, 600kg of wheat for repairing the road situated from Madhabkhali BDR camp to Dhopakhali Natunpara road, 600kg wheat for earth felling in front of Dhopakhali Daira Sharif, 3358.5 kgs of wheat for repairing the road from Santushpur to Dhopakhali road, 877 kg of wheat for repairing the Madhabkhali to Kalagram road. The accused had withdrawn total 9650.500 kgs of wheat valued at Tk. 54525 but he did not

complete the work and also did not submit any master roll of the said project. After approval from the District Bureau of Anti-Corruption, he lodged the FIR against the accused. He proved the FIR as exhibit-1 and his signature as exhibit-1/1. He was appointed as the investigating officer. He stated that the Bureau of Anti-Corruption, Dhaka vide memo No. 1132 dated 16.01.1995 had approved to lodge the FIR against the accused. He was appointed as investigating officer on 05.02.1995. During cross-examination, he stated that he investigated the case from 05.02.1995 to 07.01.1996. He affirmed that during the investigation, he did not seize any document and he also did not prepare any seizure list. He visited the place of occurrence. He did not prepare any sketch map. He also did not take any measurements of the project. He examined the record seized by the previous investigating officer. He did not measure the work done in the project. The previous investigating officer took the measurement. He and the previous investigating officer took the pre-measurement of the project. During investigation, he did not record the statement of the Chairman and Members of the Union Parishad. He also did not examine any member of the project committee. He denied the suggestion that he did not visit the place of occurrence. He denied the suggestion that the accused completed the work during the project period.

P.W. 2 Md. Alfaz Uddin stated that the accused is known to him. He was a member of the Uthali Union Parishad. He obtained wheat for earth filling in front of Dhopakhal Dayra Sharif and filled up the soil. He knows nothing. At this stage, he was declared hostile. During cross-examination, he stated that he and the accused are inhabitants of the same village and accused is not his enemy. He denied the suggestion that he falsely stated that the accused received 400 kgs of wheat and completed the work. During cross-examination on behalf of the accused, he stated that he is involved with the management of the Dargha Sharif. The accused is an active follower of the BNP. He denied the suggestion that he stated that he is not aware whether Upazila Chairman Mosharaf Hossain filed the case against the accused by influencing the authority. He knows that the accused completed the work.

P.W. 3 Riaz Uddin was tendered. During cross-examination, he stated that his house is situated along with the Dargah. He saw the earth felling at Dargah and the accused completed the work about 9/10 years ago during winter.

P.W. 4 Md. Jamat Ali is the Project Implementation Officer(PIO). He stated that in February, 1989 he was appointed as P.I.O. Jibonnagar Thana. He allotted the wheat for the "Food for Work Program" of the Uthali Union Parishad. After that, he was transferred and the wheat was allotted in the name of the accused who was the Chairman of the project committee. He proved the requisition of the allotment letter of 05 projects as exhibit-2 series and 2ka series.

P.W. 5 Md. Oliur Rahman stated that he was a member of the Madhabkhali to Kalagram road repair project and total 877 kgs of wheat was allotted. He did not look after the work. He could not say whether the master roll was submitted or not. He denied the suggestion that he did not give any statement to the investigating officer regarding the project. He heard that the accused completed the work of the project.

P.W. 6 Shahabul Islam was a member of the project committee namely, Madhabkhali BDR camp to Dhopakhali Natunpara road repair project. He could not remember the total amount of wheat allotted for the project. The work of the project was done properly. He could not remember whether the master roll was submitted or not. He physically saw the work. Mosharaf Hossain was the Chairman of the Upazila Parishad who was the leader of the Awami League. He could not say whether the accused was falsely implicated in the case as he was a supporter of BNP.

P.W. 7 Abdul Latif is a peon of the office of the PIO, Jibonnagor Thana. He was posted there in 1989-1990. He stated that the accused did not submit the master roll for the project. During cross-examination, he stated that the master roll was required to be submitted to him. After submitting the master roll there is a provision to issue a receipt. He denied the suggestion that he had no authority to give any document on behalf of

the office. He denied the suggestion that the accused submitted the master roll.

P.W. 8 Saydur Rahman is an Office Assistant of the office of the PIO, Jibonnagar. In 1989 he was posted there. He stated that the accused had done the work of 5 projects but he did not submit the master roll. During cross-examination, he stated that the accused might have submitted the master roll to the PIO. He did not say whether the PIO received any master roll.

P.W. 9 Abdul Baki Mia stated that in 1993 he was posted with the Bureau of Anti-Corruption Commission, Chuadanga. As per instruction of the District Bureau of Anti-Corruption, he inquired the ER No. 29/93 dated 26.06.1993 against the accused. During the inquiry, on 30.08.1993 he seized the letter dated 17.05.1989 written by the Chairman of Uthali Union Parishad to the Upazila Chairman. He proved the memo issued from the office of the PIO along with the documents. He proved the seizure list as exhibit-3. He proved his signature on the seizure list as exhibit-3/1. The accused signed the requisition which is also mentioned in Memo No. 261 dated 24.05.1989. He also seized requisition No. 335541 issued from the office of the PIO. He seized the delivery order Nos. 9827520, 9827511, 9827562, 9827527, 12243 on 20.09.1993 and prepared the seizure list. He proved the seizure list as exhibit-4 and his signature as exhibit-4/1.

P.W. 10 Assistant Sub-Inspector Md. Asaduzzaman stated that on 02.02.1995 he was posted as A.S.I. of Jibonnagar Thana and filled up the FIR form and recorded the FIR. He proved the FIR form as exhibit-5 and his signature as exhibit-5/1. The Defence declined to cross-examine P.W. 10.

The learned advocate Mr. Forhad Ahmed appearing on behalf of the appellant submits that the appellant is the Chairman of the 5 (five) projects under the "Food for Work Program" and after completing the project, he submitted the master roll to the Project Implementation Officer,

but the prosecution did not examine the PIO who received the master roll from the appellant. He further submits that during the inquiry and investigation, no pre-measurement worksheet and post-measurement worksheet were seized. During the investigation, no measurement of the projects was taken. The Chairman and members of the concerned Union Parishad and the members of the project committee are material witnesses but the investigating officer did not examine the Chairman and the Members of the Union Parishad and the Members of the project committee. At the instance of the local vested quarter, after conducting a perfunctory investigation malafide submitted the charge sheet against the accused. The prosecution failed to prove the charge against the accused beyond all reasonable doubt. Therefore, he prayed for setting aside the impugned judgment and order of conviction and sentence passed by the trial court.

The learned Advocate Mr. ASM Kamal Amroohi Chowdhury appearing on behalf of respondent No. 2 (ACC) submits that as Chairman of the project committee the accused received total 9650.500 kgs of wheat under the "Food for Work Program" for repairing work of the 05 projects and he did not do any work for the said wheat received by him. He also submits that without submitting the master roll to the authority he misappropriated the total wheat withdrawn by him. The prosecution witnesses proved the charge against the accused under section 409 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947 and the trial court on proper assessment and evaluation of the evidence following the law passed the impugned judgment and order of conviction and sentenced. Therefore, he prayed for the dismissal of the appeal.

I have considered the submission of the learned Advocate for the appellant and the learned Advocate engaged on behalf of respondent No. 2, perused the evidence, impugned judgment and order passed by the trial Court and the records.

At the very outset, it is noted that respondent No. 2, Anti-Corruption Commission, having filed an affidavit-in-opposition on 16.01.2024 annexed the death certificate dated 09.12.2023 issued by the Chairman, No. 7 Manoharpur Union Parishad, Jibonnagar, Chuadanga stating that during pendency of the appeal, the appellant Md. Kashiari Rahman died on 22.05.2005 and the Chairman of the Manoharpur Union Parishad affirmed the death of the appellant by issuing the death certificate dated 09.12.2023(Annexure-x). Since the appellant died on 22.05.2005 during the pendency of the appeal, I am of the view that the appeal so far relates to the conviction and sentence of imprisonment passed against the accused is abated because of the provision made in section 431 of the Code of Criminal Procedure, 1898 and the sentence of fine is required to be disposed of on merit.

On perusal of the records, it appears that there is no denial of the fact that the accused as Chairman of the project committee received 9650.500 kgs of wheat under the "Food for Work Program" to complete the repairing work of the 5 roads under Uthali Union Parishad, Jibannagar Thana. The accused was also a member of the said Union Parishad. The allegation against the accused is that he did not complete the work for the wheat withdrawn by him and did not submit the master roll to the authority. The investigating officer P.W. 1 stated that he did not measure the work during investigation. He also did not seize the pre-measurement book. The measurement was taken by the previous investigating officer(inquiry officer). He affirmed that he also did not examine the Chairman and Members of the said Union Parishad and the members of the project committee. He also admitted that he did not prepare any sketch map and seize any documents.

P.W. 9 Abdul Baki Miah is the inquiry officer. After inquiry, he recommended to lodge the FIR against the accused. During investigation, he seized the documents regarding the allotment and withdrawal of wheat by the accused but during the inquiry, he did not seize the pre-work measurement book and the post-work measurement book. To prove the



misappropriation of wheat withdrawn for the repairing work under the “Food for Work Program” the pre-work measurement book and the post-work measurement book of the project made by the concerned authority are indispensable. In the instant case, the prosecution did not prove the pre-measurement book and post-measurement book of the projects. None of the witnesses stated that measurement was taken during the inquiry or investigation of the case. The PIO is the competent officer to prove the misappropriation after taking measurements of the project but the prosecution did not examine the PIO who discharged duty at the relevant time as PIO, Jibonnagar Thana. P.W. 4 Md. Keramat Ali is the PIO and after allotment of the wheat, he was transferred. He stated that after his transfer, he did not know about the work done. The prosecution also did not examine the Chairman and the Members of the Uthali Union Parishad. P.Ws. 2, 3, 5, and 6 stated that the accused had done the repairing work. P.W. 6 Abdul Latif is the peon of the office of the PIO, Jibonnagar, P.W. 8 Saidur Rhman is the Office Assistant of the Jibon Nagar Thana. During cross-examination, he stated that he could not say whether the accused submitted the master roll to the PIO. In the absence of a pre-work measurement book and a post-work measurement book, it cannot be said that the accused misappropriated the wheat withdrawn by him without completing the project.

Furthermore, no explanation was given by the prosecution as regards the non-examination of the PIO who discharged his duty at the relevant time and the Chairman and the Members of the Uthali Union Parishad. No explanation was also given by the prosecution for not taking any pre-work measurement and post work measurement of the projects.

Because of the above facts and circumstances of the case, evidence, findings, observation and the proposition, I am of the view that the prosecution failed to prove the charge against the accused beyond all reasonable doubt.

In the result, the appeal so far relates to the conviction and sentence of imprisonment is abated and the sentence of fine is hereby set aside.

Send down the lower Court records at once.

(Md. Shohwardi,J)