

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

**Present:**

**Mr. Justice Md. Shohrwardi**

**Criminal Appeal No. 6270 of 2023**

**Khandaker Soikat**

**-versus-**

**The state and another  
with**

**Criminal Appeal No. 6376 of 2023**

**Md. Awal Hossan and another**

**-versus-**

**The state and another  
with**

**Criminal Appeal No. 6314 of 2023**

**Chinmoy Sarkar**

**-versus-**

**The state and another**

**Criminal Appeal No. 6194 of 2023**

**Md. Kamal Hossain**

**-versus-**

**The state and another**

Mr. Md. Moniruzzaman, Advocate

.....For the appellant in Crl. Appl. No. 6270 of 2023

MS. Farzana Sharmin, Advocate

...For the appellant in Crl. Appl. No. 6376 of 2023

Ms. Marjina Raihan, Advocate

...For the appellant in Crl. Appl. No. 6314 of 2023

Mr. Charan Chandra Talukder, Advocate

...For the appellant in Crl. Appl. No. 6194 of 2023

Mr. Md. Omar Farook, Advocate

...For the respondent No. 2 in all the appeals  
Mr. Rezaul Karim, DAG with  
Mr. Md. Shahidul Islam, AAG with  
M/s. Sharmin Hamid, AAG

...For the State in all the appeals.

**Heard on 27.10.2024, 28.10.2024, 29.10.2024,  
3.11.2024.**

**Judgment delivered on 05.11.2024**

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

The criminal appeals mentioned hereinabove are directed under section 10 (1)(a) of the Criminal Law Amendment Act, 1958 challenging the legality and propriety of the impugned judgment and order dated 20.06.2023 passed by Divisional Special Judge, Rajshahi in Special Case No. 03 of 2016 (Natore) convicting the appellants under section 511 of the Penal Code, 1860 and sentencing them thereunder to suffer rigorous imprisonment for 04 (four) months and to pay fine of Tk. 1000 (one thousand), convicting the appellant Khandaker Soikat and Chinmoy Sarkar under section 467 of the Penal Code, 1860 and sentencing them thereunder to suffer rigorous imprisonment for 04 (four) months and fine of Tk. 1000(one thousand) and convicting the appellants under section 471 of the Penal Code, 1860 and sentencing them to suffer rigorous imprisonment for 4(four) months and fine of Tk. 1000(one thousand) each which will run concurrently.

The prosecution case in short, is that on 27.03.2014 at 1:00 pm 3 bills were presented in the purchase section of the North Bengal Sugar Mills to pay the value of sugarcane. On 28.03.2014 at 9.00 am 10 bills and at noon 11 bills, total 24 bills, were presented in the account section of the said mills for payment of the value of sugarcane. On examination of the total 24 bills, it was found that the bills were forged and a false seal was

used on the bills and there was no similarity between the submitted bills and the original bills. The mills' authority by office order contained in Memo No. প্রশা/সাধ-৯(৩)/২০১৪/৫১৪ dated 28.03.2014 formed 3 members committee headed by (1). DGM, Naimuddin Uddin (2). Deputy Manager Md. Anowar Hossain, and (3). Deputy Manager Atiquzzaman of North Bengal Sugarcane Mills. After inquiry, the inquiry committee found that 24 bills were forged and the names of the cultivators mentioned in the bills are innocent. During the inquiry, it was found that Md. Kamal Hossain, Md. Awal Hossan, Md. Farid Hossan and Md. Shahabuddin presented the forged bills. On 28.03.2014 at 6.00 pm, 4 persons were called to the office of the Deputy General Manager Naim Siddique and they admitted that out of total 24 bills, they received 10 bills from Chinmoy Sarkar and 14 bills from Khandaker Soikat. The accused persons in connivance with each other created/forged the said bills to misappropriate total Tk. 66,820.

After that, S.I. AFM Asaduzzaman took up investigation of the case. Since the alleged offences are scheduled offences under the Anti-Corruption Commission Act, 2004 the case was sent to the Anti-Corruption Commission, Head Office, Dhaka. After that Wajed Ali Gazi, Assistant Director, Anti-Corruption Commission, Rajshahi was entrusted with the investigation of the case. During investigation, the investigating officer seized the documents and recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898. After completing the investigation, the investigating officer found prima facie truth of the allegation made against the accused Khandaker Soikat, Chinmoy Sarkar, Md. Kamal Hossan, Md. Awal Hossan and Md. Farid Hossain and submitted charge sheet on 04.10.2015 under sections 420/467/468/471/511/109 of the Penal Code, 1860 against them. The Senior Judicial Magistrate, Cognizance Court No. 5, Natore took cognizance of the offence against the accused persons and sent the records to the Senior Special Judge, Natore who took cognizance of the offence against the accused under sections

420/467/471/511/109 of the Penal Code, 1860 and sent the records to the Divisional Special Judge, Rajshahi for trial and disposal of the case.

During the trial, charge was framed against the accused under sections 420/467/468/471/511/109 of the Penal Code, 1860 which was read over and explained to them and they pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 24 witnesses to prove the charge against the accused persons. After examination of prosecution witnesses, they were examined under section 342 of the Code of Criminal Procedure, 1898 and they declined to adduce any DW. After concluding the trial, the trial court by impugned judgment and order convicted the accused persons and sentenced them as stated above against which they filed the instant appeal.

P.W. 1 Al-Farook Omar Sharif Galib is the Deputy Manager (Admin) of North Bengal Sugar Mills. He stated that at the time of occurrence on 27.03.2014 he was the Assistant Manager of the said Sugar Mills. On that day, Farid presented 3 bills and on 28.03.2014 Kamal presented 10 bills, and Awal presented 11 bills for payment of the bills for the sugarcane. On examination of the said bills, it was found that those bills were forged. On 28.03.2014 an inquiry committee was formed. The inquiry committee informed that those bills were forged. 10 bills submitted by Kamal were supplied by Chinmoy Sarkar and 14 bills submitted by Farid and Awal were supplied by the accused Khandaker Soikat. After that, under the instruction of the authority, he lodged the FIR against Khandaker Soikat and accused Chinmoy Sarkar. He proved the FIR as exhibit-1 and his signature on the FIR as exhibit-1(Ka). During cross-examination, he stated that the bills were not submitted to him. He affirmed that the names of Kamal, Farid and Awal were not mentioned in those bills. He was a member of the inquiry committee formed on 28.03.2014 and he lodged the FIR following the inquiry report. The persons mentioned in the bills were not examined by the inquiry committee. On recall, P.W. 1 proved 24 bills and 3 note sheets (as exhibit-2 series), inquiry report dated 05.06.2014 as

exhibit-3, records of the departmental case and the order of dismissal of the accused Khandaker Soikat as exhibit-4, office order dated 21.11.2013 of the said sugar mills, 2 attendances register from December 2013 to March 2015 as exhibit-5 series. The carbon copy of order receipt No. 810, book No. 80901281000 was proved as exhibit-6 series and the weight receipt register of 2013-2014, pages No-1 to 95 as exhibit-7 series. On 10.04.2014 at 2.05 pm ASM Asaduzzaman seized 24 sugarcane-weight receipts. He proved the seizure list as exhibit-10 and his signature as exhibit-10/1. On 16.07.2014 at 10.00 am Wajed Ali prepared the seizure list. He proved the seizure list as exhibit-11 and his signature on the seizure list as exhibit-11/1. He proved 24 sugarcane weight receipts of North Bengal Sugar Mills Ltd, Natore as material exhibit-I, I/1, I/II. The attendance register of the employees of the North Bengal Sugar Mills from December 2013 to March 2014, 8+8=16 pages, as material exhibit-II, II/1 and II/2 series, photocopies of the sugarcane weight receipts No. 810 as material exhibit-III, weight receipt register (description) for 2013 to 2014 (1 to 34 page) as material exhibit-IV. During cross-examination, he stated that he was not a member of any departmental proceeding. No payment was made based on the alleged 24 forged weight bills.

P.W. 2 Md. Anowar Hossain was the Deputy Manager of North Bengal Sugar Mills. He stated that on 27.03.2014, 3 bills and on 28.03.2014, 21 bills, total 24 bills, were presented. It was suspected that those bills were forged. An enquiry committee was formed for the examination of the bills. On examination of those bills, it was found that bills were forged. After that a 3 members committee was formed and he was the member of the committee. The accused attempted to withdraw the money but they could not succeed. During cross-examination, he stated that on 28.03.2014 he was instructed to inquire and on 29.03.2014 he submitted the report which was not produced to the court. No letter was issued to the accused Nos. 1 and 2 to appear before the inquiry committee. He did not find any documents that accused No. 1 and 2 forged those bills.

P.W. 3 Khaled Mahmud was the Manager (Production) of North Bengal Sugar Mills. He stated that a committee was formed regarding the said bills and he was a member of the committee. After inquiry, the committee submitted the report. He proved the inquiry report as exhibit-3 and his signature as exhibit-3/Ka. During cross-examination, he stated that he was not a member of the initial inquiry committee. He was a member of the second inquiry committee. In the report, it has been noted that the accused Khandaker Soikat and Chinmoy wrote those bills. He compared the signatures of Khandaker Soikat and Chinmoy Sarkar in the statement recorded during the inquiry and the handwriting on the bills. He admitted that he had no training as a handwriting expert. He denied the suggestion that they did not inquire correctly.

P.W. 4 Md. Naim Siddique was the Deputy General Manager (Collection) of North Bengal Sugar Mills. The authority formed a 3 members committee including him. On examination of 24 bills, the committee found that those were forged and accordingly he submitted the report. He proved his signature on the report (exhibit-3) as exhibit-3/Kha. During cross-examination, he affirmed that during the inquiry accused Soikat did not admit his guilt.

P.W. 5 Md. Atiquzzaman is the Deputy Manager (Accounts) of North Bengal Sugar Mills. He stated that on 28.03.2017, 24 disputed bills were submitted to the North Bengal Sugar Mills. The authority formed a 3-member committee to submit the report within 24 hours and he was the member of the said committee. During the inquiry, the statements of the carriers of the bills and the suspected persons were recorded and all of them stated that they took the bills from the accused Khandaker Soikat and Chinmoy Sarkar and submitted the bills to North Bengal Sugar Mills. The inquiry committee found that the accused Khandaker Soikat and Chinmoy Sarkar were responsible for forging those bills and accordingly submitted the report on 29.03.2014. He proved his signature on the report (exhibit-3) as exhibit-3/Ga. In the opinion part of the report, the names of Khandaker

Soikat and Chinmoy Sarkar were not mentioned. In the 24 bills, it has been mentioned that accused Khandaker Soikat and Chinmoy Sarkar were the carriers of those bills.

P.W. 6 Akhter Hossain was Deputy General Manager, North Bengal Sugar Mills. He stated that the occurrence took place in 2014. A four-member committee was formed and he was a member of the said committee. Khaled Mahmud, Saifur Rahman and Chand Ali were the members of the said committee. A committee was formed in the year 2013-2014 regarding 24 suspected forged bills. A complaint was filed on 05.04.2014 regarding the forgery of the sugarcane weight receipts against the accused Khandaker Soikat and on 22.04.2014 another complaint was made on the same issue. Khandaker Soikat, an employee of the said sugarcane mills, had given his reply which was found not satisfactory. After that, a four-member committee was formed. During the inquiry, the committee recorded the statement of witnesses and collected the audio record of the concerned persons who submitted the sugarcane weight receipts and submitted the report on 05.06.2014. He proved his signature on the report (exhibit-3) as exhibit-3/Gha. During cross-examination, he stated that on 13.05.2014 the inquiry committee was formed. On 19.05.2014 another amended committee was formed. He was a member of the second inquiry committee which was a high-powered committee and recorded the statement of total 16 witnesses. He could not say the name of the person who had written the weight receipts. In the report, it has been mentioned that the handwriting of accused Khandaker Soikat was compared with the handwriting of the weight receipts. Kamal submitted 10 receipts, Awal submitted 11 receipts and Farid submitted 3 receipts. Farid was an employee of the Mills. He did not name the Kamal as accused. In the report, it has been mentioned that the accused Chinmoy was not an employee of the mills. Kamal, Awal and Farid stated that they got the weight receipts from accused Khandaker Soikat. During the inquiry, the committee did not find any receipts in the custody of the accused Soikat and Chinmoy. Shohidul

Islam, uncle of the accused Soikat, was the President of the CBA of North Bengal Sugar Mills. He admitted that he is not a handwriting expert. He affirmed that an attempt was made to misappropriate total Tk. 66,820. He denied the suggestion that the accused persons were not involved in the occurrence. He affirmed that he did not make any recommendation against the accused Kamal, Awal and Farid.

P.W. 7 Biddut Kumar Pal is the Account Assistant, Accounts Section, North Bengal Sugar Mills. He stated that on 28.03.2014 weight receipts were submitted for examination. On examination, he found that one bill was forged. Subsequently, 9 receipts were given. On examination of the 10 bills, he found that those were forged. After that 11 bills were submitted which were also found forged. He examined the exhibited bills. During cross-examination, he stated that he examined total 21 receipts.

P.W. 8 Saidur Rahman was a Workshop Helper of North Bengal Sugar Mills. He stated that on 29.01.2015 Assistant Director Md. Wazed Ali Gazi of the Anti-Corruption Commission seized documents from the Deputy General Manager Khaled Mahmud. He proved the seizure list as exhibit-8 and his signature on the seizure list as exhibit-8/1. He was a member of the inquiry committee. The Deputy General Manager Khaled Mahmud, Chand and Akhter were the members of the committee. Akter sir had given the proposal to the inquiry committee. The committee found the truth of the allegation against the accused Khandaker Soikat and Chinmoy Sarkar. He proved the attested copy of the inquiry report (total 7 pages) as exhibit-9. During cross-examine, he stated that he was the Joint Secretary of the CBA and Shahidul Islam was the President of the CBA and accused Khandaker Soikat is the nephew of Shahidul Islam. He was a member of the inquiry committee and represented the labour. The officers conducted the inquiry and he was along with them. He signed the inquiry report following the instruction of Akhtar Hossain. He denied the suggestion that he deposed falsely.

P.W. 9 Chand Ali was discharging his duty as Manager on 13.05.2014. He was a member of 4 members committee. He found the truth of the forgery against accused Khandaker Soikat. He stated that he signed the report (exhibit 9). During cross-examination, he stated that he did not compare the signature of accused Soikat. He affirmed that Farid submitted 3 bills, Awal submitted 11 bills and Kamal submitted 10 bills.

P.W. 10 Liakat Ali Khan was the Head of the Centre of Sugar Mills. On 27.03.2014 Shahabuddin presented 3 weight receipts to compare whether those receipts were genuine or not. He requested to keep those for verification. He informed me that he got those bills from Farid. On examination of the bills, he found that none of the mills signed the bills. After that, he informed the matter to the department for taking necessary action. During cross-examination, he stated that Shahabuddin was known to him.

P.W. 11 Zahedul Islam is the Purchase Clerk of North Bengal Sugar Mills. He stated that since 2000 he has been discharging his duty as purchase clerk. He used to take the weight of the empty vehicles. After taking weight, he signed the weight bills. The authority of the mills presented 24 bills to him. He affirmed that he did not sign 24 bills. The accused Chinmoy Sarkar was not an employee of the mill. Shahidul Islam was the President of the North Bengal Sugar Mills and Soikat is the nephew of Shahidul Islam. The officers of the ACC also produced the bills to him. He denied the suggestion that he signed the bills or he deposed falsely.

P.W. 12 Md. Showkat Hossain is the Seasonal Purchase Clerk of North Bengal Sugar Mills. He stated that the weight of the vehicles was taken along with the sugarcane. He took the weight of the vehicles. After taking weight, he signed the weight receipts. In the receipts, the net weight and the weight of the sugarcane is written. He did not sign the weight receipts produced by the officer of the Anti-Corruption Commission. He did

not take the measurements of the vehicles mentioned in the weight receipts. He did not sign the exhibited weight receipts (24 receipts). During cross-examination, he could not say where the receipts were produced.

P.W. 13 Md. Shahid Alam is the Checking Clerk of the Sugarcane Accounts Section. He stated that he has been discharging his duty in the mill since 2007. The occurrence took place during 2013-2014. He was entrusted with the duty to examine the value of the sugarcane and the weight of the vehicles and sugarcane. He did not sign 24-weight receipts. The mill authority did not issue the receipts. During cross-examination, he stated that he was not aware where from the bills were produced.

P.W. 14 Md. Monjur Rahman was the Seasonal Checking Clerk of North Bengal Sugar Mills. He stated that he was discharging his duty since 2011. The occurrence took place in the year 2013-2014. On 28.03.2014 he came to his office. It was informed that a forged bill was found. He heard from Biddut Kumar that 1 forged bill was found from Kamal. He called Kamal to find out whether there was any other forged bill. He admitted that there were 9 forged bills. He affirmed that he got those bills from Soikat. The accused Soikat handed over those forged bills. Biddut Kumar Pal took the bills from Kamal. At 11-11.30, Awal also had given a few bills to verify. On examination, he found that those bills were forged. After that, he along with Awal and bills went to Deputy General Manager (Accounts). He handed over those bills to the Deputy General Manager from the hand of the accused Awal. The General Manager (Accounts) handed over those bills to Biddut Kumar for verification. He affirmed that he did not sign any bill. During cross-examination, he affirmed that he heard from Kamal. He denied the suggestion that he deposed falsely.

P.W. 15 Md. Nurul Islam is the Head of Center (Sugar), North Bengal Sugar Mills. He stated that he has been discharging his duty since 2009. In 2013-2014, he was the Head of the Center. He did not sign the exhibited bills. He did not sign the book No. 810. The exhibited weight

receipts and Book No. 810 were forged in connivance with the accused persons. During cross-examination, he stated that the officers of the mills produced those bills. No payment was made as regards the disputed weight receipts. He could not say who had written the disputed weight receipts. He could not say from home the weight receipts were produced.

P.W. 16 Ahamed Ali has been discharging his duty as Head of the Center(Sugar), North Bengal Sugar Mills since 2012. In 2013-2014, he was discharging his duty in the mill. The officer of the mill and the officer of the Anti-Corruption Commission produced the photocopy of the weight receipts and book No. 810. He did not sign the weight receipts and book No. 810. Soikat forged those bills. During cross-examination, he stated that at the relevant time, he was the Head of the Center(Sugar). He did not sign the weight receipts and no payment was made regarding the weight receipts. He could not say when the weight receipts were submitted. At the time of producing the forged bill to him, the accused Soikat and Chinmoy were not present. He could not say who signed the bills.

P.W. 17 Md. Jamal Hossain was the General Manager (Accounts) of North Bengal Sugar Mills. He stated that on 28.03.2014 he was discharging his duty as General Manager of North Bengal Sugar Mills. On that day, the Seasonal Checking Clerk Md. Monjur Hossain presented Awal to him and told that there were some weight receipts. At that time, he instructed me to produce those receipts. Md. Monjur Hossain handed over those receipts to Biddut Kumar Pal who verified those weight receipts. He found that those were forged. He prepared the note sheet and instructed them to take appropriate action based on the report submitted by the inquiry committee against the accused Soikat and Chinmoy. He denied the suggestion that he was instructed to file the case without knowing anything.

P.W. 18 Md. Obaidullah stated that since 2011 he was discharging his duty as Sugarcane Purchase Clerk. In 2013- 2014, he was discharging his duty as a checking clerk. He was entrusted to write the daily weight and

number on the weight receipts. He did not sign 24 sugarcane weight receipts (material exhibit-I). He did not write the daily number and current number of the 24-weight receipts. He heard from Biddut that accused Soikat and Chinmoy forged those bills. During cross-examination, he stated that he was the checking clerk. He denied the suggestion that he did not hear or see anything.

P.W. 19 Md. Atiur Rahman stated that since 2007 he was discharging his duty as seasonal purchase clerk at the mill gate. He was entrusted to write the names of the cultivators and weight in the weight receipts. He did not sign 24-weight receipts (material exhibit-I). Biddut Babu said that Soikat and Chinmoy forged those bills. He stated that he is not aware whether he stated to the investigating officer that the accused Soikat and Chinmoy forged those bills.

P.W. 20 Shahinur Rahman, Seasonal Purchase Clerk, was tendered by the prosecution and declined by the defence.

P.W.21 Wazed Ali is the Deputy Director (retired) Anti-Corruption Commission, Khulna. He stated that from January 2014 to November 2015 he was discharging his duty as Assistant Director, Anti-Corruption Commission, Combined District Office, Rajshahi. He was appointed as investigating officer vide Memo No. 1787 dated 30.06.2014. During the investigation, he visited the place of occurrence, recorded the statement of witnesses, seized the documents and prepared the seizure list. The accused Khandaker Soikat, Chinmoy Sarkar, Md. Kamal Hossain, Md. Awal and Md. Farid made attempt to misappropriate Tk. 66,840 by forging sugarcane weight receipts. During the investigation, he found the truth of the allegation against the accused persons and submitted a memo of evidence on 09.09.2015 against them. After getting approval, he submitted charge sheet on 04.10.2015 against the accused persons. During cross-examination, he stated that he took up investigation of the case on 11.07.2014. He is the second investigating officer. He denied the suggestion that on perusal of the

inquiry report submitted by the mill authority, he submitted a charge sheet. He did not seize 24 forged weight receipts from accused Khandaker Soikat and Chinmoy Sarkar. In the FIR, the name of the accused Md. Kamal Hossain, Md. Awal Hossan and Md. Farid Hossan were not mentioned.

P.W. 22 Motiar Rahman stated that on 04.04.2014 he was discharging his duty as officer-in-charge of Lalpur Thana, Natore. On that day, Al-Faruque Omor lodged a written FIR and he recorded the same. He proved his signature on the FIR as exhibit-1(Kha), 1(Ga) and 1(Gha). Initially, Sub-Inspector AFM Asaduzzaman was appointed as the investigating officer. Since the offence alleged is a scheduled offence under the Anti-Corruption Commission Act, 2004 the case was sent to the Anti-Corruption Commission. During cross-examination, he stated that he only recorded the FIR.

P.W. 23 AFM Asaduzzaman is the Police Inspector, DB, Lalmonirhat. He stated that on 04.04.2014, he discharged his duty as Sub-inspector of Lalpur Thana, Natore. He took up the investigation of the case from the Officer-in-Charge. He visited the place of occurrence and prepared the sketch map and index. He proved the sketch map as exhibit-12 and his signature as exhibit-12/1. He proved the index as exhibit-13 and his signature on the index as exhibit-13/1. He seized 24 weight receipts. He proved his signature on the seizure list (exhibit-10) as exhibit-10/2. He recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898. Since he was transferred, he handed over the records to Iqbal. The accused Khandaker Soikat did not make any confession.

P.W. 24 Md. Reazul Haque is the Security Officer (retired) of North Bengal Sugar Mills. He stated that on 10.04.2014 he discharged his duty as Security Officer of North Bengal Sugar Mills. On that day, S.I. AFM Asaduzzaman prepared the seizure list at 2.05 pm and he signed the seizure list. He proved his signature on the seizure list (exhibit-10) as exhibit-12/2.

During cross-examination, he stated that he only signed the seizure list and he is an employee of the security section.

The learned Advocate Mr. Md. Moniruzzaman appearing on behalf of the appellant Khandaker Soikat submits that the weight receipts (material exhibit-I) was not sent to the handwriting expert to prove that the bills were written by accused Khandader Soikat and the signature of the accused Khandaker Soikat given at the time of examination of the accused under section 342 of the Code of Criminal Procedure, 1898 is not identical to the handwriting of the material exhibit-1 and the trial court most illegally held that 24 bills were written by the accused Khandaker Soikat and he handed over those weight receipts and bills to accused Md. Awal Hossan, Md. Farid Hossan and Md. Kamal Hossain. He further submits that the accused Khandaker Soikat did not present the bills to the North Bengal Sugar Mills and the prosecution failed to prove the charge against the accused beyond all reasonable doubt. He prayed for allowing the appeal by setting aside the impugned judgment and order passed by the trial court.

The learned Advocate Ms. Marjina Raihan appearing on behalf of the appellant Chinmoy Sarkar submits that no evidence was adduced by the prosecution to prove that the accused had written the bills and submitted to the North Bengal Sugar Mills. The trial court relying on the hearsay evidence convicted the accused and the prosecution failed to prove the charge against him beyond all reasonable doubt.

The learned Advocate Ms. Farzana Sharmin appearing on behalf of the accused Md. Awal Hossan and Md. Farid Hossan submits that no evidence was adduced by the prosecution to prove that the accused Md. Awal Hossan and Md. Farid Hossan presented the bills knowing that those are forged bills. The prosecution failed to prove that the accused Md. Awal Hossan and Md. Farid Hossan forged the bills and the trial court without any legal evidence convicted the accused persons. Therefore, she prayed for setting aside the impugned judgment and order passed by the trial court.

The learned Advocate Mr. Sharon Chandra Talukder appearing on behalf of the accused Md. Kamal Hossain submits that the prosecution failed to prove that the accused forged any bill (material exhibit-I series) and submitted the bills knowing that the bills were forged. The trial court without any legal evidence convicted the accused. He also prayed for setting aside the impugned judgment and order passed by the trial court.

The learned Advocate Mr. Md. Omar Farook appearing on behalf of respondent No. 2 (ACC) in all the appeals submits that in the report dated 05.06.2014 (exhibit 3/Ka), it has been opined that the accused Khandaker Soikat forged the bills and the trial court on correct assessment and evaluation of the evidence adduced by the prosecution arrived at a finding that the signature of the accused Khondaker Soikat given at the time of examination under section 342 of the Code of Criminal Procedure, 1898 is identical to the handwriting on the bills (material exhibit-1 series). He further submits that the accused Khandaker Soikat and accused Chinmoy Sarkar forged the bills and submitted forged bills through the accused Md. Kamal Hossain, Md. Farid Hossan and Md. Awal Hossan to the North Bengal Sugar Mills to misappropriate total Tk. 66,840 and the trial court on proper assessment and evaluation of the evidence rightly convicted the accused persons. He prayed for the dismissal of the appeals.

I have considered the submission of the learned Advocates who appeared on behalf of the appellants, learned Advocate Mr. Md. Omar Farook who appeared on behalf of respondent No. 2(ACC) in all the appeals, perused the evidence, the impugned judgments and orders passed by the courts below and the records.

On perusal of the records, it appears that on 27.03.2014 and 28.03.2014, total 24 bills (material exhibit-I) were presented to P.Ws. 5 and 7 to verify the genuinity of those bills and after verifying the bills, P.Ws. 7 and 10 had given 3 notes on 28.03.2014. In the note dated 28.03.2014 given by P.W. 10 Md. Liakot Ali Khan it has been stated that 3 bills were

presented by one Md. Shahabuddin (exhibit-2). Two notes were given by P.W. 7 Biddut Kumar Pal which were exhibited as exhibits- 2/1 and 2/2. In exhibit-2/1 it has been mentioned that 11 bills were presented to the accounts section for verification and in exhibit-2/2, it has been mentioned that Md. Kamal Hussain, a labourer of the factory, presented 10 sugarcane bills valued at Tk. 27,500 for verification. On perusal of the FIR (exhibit-1), it reveals that the accused Khandaker Soikat and Chinmoy Sarkar are the FIR-named accused and accused Md. Kamal Hossain, Md. Awal Hossan and Md. Farid Hossan are witnesses of the FIR. Therefore, it is clear as daylight that accused Md. Farid Hossan and Md. Awal Hossan did not present any bill to the North Bengal Sugar Mills for verification.

On perusal of the evidence, it appears that after the presentation of 24 bills (material exhibit- I series), the authority of North Bengal Sugar Mills formed 2 committees. One committee was formed headed by Md. Naimuddin Siqqique (P.W. 4) and P.Ws. 2 Md. Anwar Hossain and P.W.5 Atiquzzaman were the members of the said committee who submitted the report on 29.3.2014 (exhibit-3/Kha) and the inquiry committee found the involvement of accused Khandaker Soikat and Chinmoy Sarkar. No adverse remark has been made by the said committee against the accused Md. Farid Hossain, Md. Kamal Hossain and Md. Awal Hossan. Another committee was formed headed by Akter Hossain (P.W. 6) and P.Ws. 3, 8 and 9 were the members of the said committee. After inquiry, the said committee submitted the report on 05.06.2014. In the report dated 05.6.2014(exhibit-3), it has been opined that the accused Chinmoy Sarkar and Khandaker Soikat created/supplied 24 bills (material exhibit-I series). P.W. 2 stated that the inquiry committee did not find any evidence that accused Nos. 1 and 2 forged the bills. Bills were not seized from the possession of Khondaker Soikat and Chinmoy Sarker and at the time of presentation of the bills they were not present.

On the assessment of the evidence of the prosecution witnesses, the trial court held that the signature of the accused Khandaker Soikat given at

the time of examination of the accused under section 342 of the Code of Criminal Procedure, 1898 is identical to the handwriting of 24 bills (material exhibit-I series). Under section 73 of the Evidence Act, 1872 the court is empowered to compare the admitted signature of any person. During the investigation, the signature of accused Khandaker Soikat and the alleged handwriting of the bills were not sent to the handwriting expert to ascertain that the signature of accused Khandaker Soikat given at the time of examination of the accused under section 342 of the Code of Criminal Procedure, 1898 is identical to the alleged handwriting of the bills (material exhibit- I series.) No evidence was adduced by the prosecution that accused Khandaker Soikat and Chinmoy Sarkar presented any bill.

It is the duty of the prosecution to prove the charge against the accused to the hilt beyond all reasonable doubt by adducing legal evidence. The court will not act as a prosecutor to ensure the conviction of the accused. No step was taken by the prosecution to ascertain the alleged handwriting of the accused Khandaker Soikat on the bills (material exhibit-I series) sending those bills to a handwriting expert. Nowadays, science has developed to the highest peak. The trial court should not compare the signature of the accused by it resorting to the unsatisfactory and dangerous mode of comparison of the disputed signature or handwriting with the admitted signature or handwriting without expert opinion.

At this stage, it is relevant here to rely on a decision made in the case of Tarak Chandra Majhi vs Atahar Ali Howlader and others reported in 8 BLC (AD) (2003) 67(Md. Ruhul Amin, J), judgment dated: 29.10.2002 para 14 wherein it has been held that;

“In case of contentious writing, signature, etc, though the provision of section 73 of the Evidence Act permits the court to compare the contentious signature with the admitted signature, the safe and best course, in our view, for the court would be to

avoid the practice of comparing the writing or signature, etc and should not stake its judgment on the opinion formed or view taken upon resorting to risky or, in other words, 'unsatisfactory and dangerous' procedure."

Since the trial court compared the signature of the accused Khandaker Soikat, it is the bounden duty of this court to compare the admitted signature of the accused Khandaker Soikat put at the time of examination of the accused under section 342 of the Code of Criminal procedure, 1898. On careful examination of the signature of the accused Khandaker Soikat given at the time of examination under 342 of the Code of Criminal Procedure, 1898 and the alleged handwriting of 24 bills (material exhibit-I series) it reveals that the handwriting of said 24 bills are not identical to the signature of accused Khandaker Soikat given at the time of examination under section 342 of the Code of Criminal Procedure, 1898. Therefore, I am of the view that the trial court wrongly held that the accused Khandaker Soikat wrote 24 bills (material exhibit-1 series).

No evidence was adduced by the prosecution that the accused Chinmoy Sarkar forged the bills (material exhibit-I). The signature of Khandaker Soikat at the time of his examination under section 342 of the Code of Criminal Procedure, 1898 is not identical to the handwriting on the material exhibit-I. The prosecution failed to prove that accused Khandaker Soikat and Chinmoy Sarkar forged 24 bills (material exhibit-I). There is no allegation against the accused persons that they have withdrawn the money of 24 bills. It is found that one Shahabuddin presented 3 bills but the prosecution neither cited him as accused nor examined him in the case as witness.

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

doubt and trial court without proper assessment and evaluation of the evidence illegally passed by the impugned judgment and order.

In the result, all appeals are allowed. The impugned judgment and order of conviction and sentence passed by the trial court against the accused 1). Khandaker Soikat 2). Md. Awal Hossan 3). Md. Farid Hossan 4). Chinmoy Sarkar and 5). Md. Kamal Hossain are hereby set aside.

Send down the lower Court's record at once.