ক্রমিক নং	তারিখ	নোট ও আদেশ
4144	0(1,4 4	
		বাংলাদেশ সুপ্রীম কোর্ট
		হাইকোর্ট বিভাগ
		(ফৌজদারী আপীল অধিক্ষেত্র)
		উপস্থিতঃ
		বিচারপতি জনাব মোঃ আশরাফুল কামাল
		ফৌজদারী আপীল নং- ১৮৯৫/১৯৯৪
		মোঃ আমেজ উদ্দিন
		সাজাপ্রাপ্ত-আপীলকারী।
		-বনাম-
		রাষ্ট্র
		রাষ্ট্র-প্রতিপক্ষ।
		এ্যাডভোকেট উপস্থিত নাই
		সাজাপ্রাপ্ত-আপীলকারী পক্ষে।
		এ্যাডভোকেট নুরউস সাদিক চৌধুরী, ডেপুটি এ্যাটর্নী জেনারেল সংগে
		এ্যাডভোকেট লাকী আক্তার, সহকারী এ্যাটর্নী জেনারেল
		এ্যাডভোকেট ফেরদৌসী আক্তার, সহকারী এ্যাটর্নী জেনারেল
		রাষ্ট্র-প্রতিপক্ষ পক্ষে।
		শুনানী এবং রায় প্রদানের তারিখঃ ০২.০৮.২০২৩।
		বিচারপতি জনাব মোঃ আশরাফুল কামালঃ

বিজ্ঞ বিভাগীয় বিশেষ জজ, রাজশাহী বিভাগ, রাজশাহী কর্তৃক বিশেষ মোকদ্দমা নং-১০/১৯৯৩ (নওগাঁ)-এ প্রদত্ত বিগত ইংরেজী ১০.১০.১৯৯৪ তারিখের রায় ও দন্ডাদেশের বিরুদ্দে অত্র আপীল।

আপীলকারী পক্ষে বিজ্ঞ এ্যাডভোকেট অনুপস্থিত।

অপরদিকে, রাষ্ট্র প্রতিপক্ষ পক্ষে বিজ্ঞ ডেপুটি এ্যাটর্নী জেনারেল এ্যাডভোকেট নুরউস সাদিক চৌধুরী বিস্তারিতভাবে যুক্তিতর্ক উপস্থাপন করেন।

অত্র ফৌজদারী আপীল দরখাস্ত এবং নথী পর্যালোচনা করলাম। রাষ্ট্র-প্রতিপক্ষ পক্ষের বিজ্ঞ ডেপুটি এ্যাটর্নী জেনারেল এর যুক্তিতর্ক শ্রবণ করলাম।

গুরুত্বপূর্ণ বিধায় বিভাগীয় বিশেষ জজ, রাজশাহী বিভাগ, রাজশাহী কর্তৃক বিশেষ মোকদ্দমা নং-১০/১৯৯৩ (নওগাঁ)-এ প্রদত্ত বিগত ইংরেজী ১০.১০.১৯৯৪ তারিখের রায়টি নিম্নে অবিকল অনুলিখন হলোঃ-

In brief, the case of the prosecution is a follows:-

নোট ও আদেশ

তারিখ

ক্রমিক নং

নম্বর ২০

That accused Md. Amezuddin was Chairman of Jagadispur Union Parishad under Badalgachi P. S. and in the financial year 1990-91 two projects one for repairing road running from the house of Lutfar Rahman of village Uttar Rampur to the house of Mizanur Rahman of village UttarShyampur and another project for reparing road running from village Bemanpara to the house of Jharu of village Uttar Rampur were formed under Food for works Programme in the rainy season. A project committee consisting of 5 members was approved fro those two projects by Upazilla Prarishad and accused Amezuddin was Chairman of the said two projects. Accused Amezuddin as Chairman of the projects on 29.07.91 lifted 8.900 Matric Tons of wheat for those two projects. After withdrawal of the said wheat accused Amezuddin misappropriated entire lifted wheat without performing any repairing work of the said two projects and as such he committed offence U/S 409 of Penal Code R/W section 5(2) of Act II/47. Investigating Officer at the time of investigation

Investigating Officer at the time of investigation examined witnesses U/S 161 Cr. P. C. and after consulting papers and statements of the witnesses submitted charge sheet against accused Amezuddin U/S. 409 of Penal Code R/W Section 5(2) of Act II/47.

Learned Senior Special Judge, Noagaon took cognizance against accused Amezuddin U/S. 409 of Penal Code R/W section 5(2) of Act II/47 on 13.05.93 and on 24.05.93 Ld. Senior Special Judge Naogaon framed charge against accused Amezuddin U/S. 409 of Penal Code R/W section 5(2) of Act II/47 and the same was read over to accused Amzuddin who pleaded not gilty and claimed to be tried according to Law.

ক্রমিক নং	তারিখ	নোট ও আদেশ
		Defence Case:- Defence has not examined any D
		W. But from the trend of cross-examination of P. Ws
		and the statement of accused Amezuddin U/S. 342 Cr. P
		C. it's case runs as follows:-
		That he lifted 8.900 Matric Tons of wheat and
		performed repairing works of the two poject road an
		submitted muster-roll. But P. I. O. refused to receiv
		musterroll and as such he submitted muster-roll t
		Upazilla Chairman and Steno Jahangir Alam receive
		and muster-roll and he is innocent.
		Points for determination
		1. Whether accused Amezuddin Misappropriated Gov
		wheat?
		2. Whether accused Amezuddin is guilty?
		Discussion and decision
		Both the points are taken up together fo
		convenience of discussion. P. W. 1 Abdus Salam A
		Molla who is informant and I/W of this case. P. W.
		stated both in his chief and cross-examination the
		accused Amezuddin was Chairman of Jagadishpi
		Union Parishad and in the financial year 1990-91 on
		project for repairing a road running from the house of
		Lutfar Rahman of Uttar Rampur to the house of Mizani
		Rahman of Uttar Shyampur and another project fo
		repairing road running from Bamanpara to the house of
		Jhara of Rampur were sanctioned and 6.00 Matric Ton
		of wheat and 2.900 Matric Tons of wheat wer
		respectively allotted for the two projects and accuse
		Amezuddin lifter 8.900 Matric Tons of wheat a

Chairman of the said two projects

misappropriated entire wheat without performing any

project work. Learned Lawyer for the accused person

suggested P. W. 1 that accused Amezuddin properly

ক্রমিক নং তারিখ	নোট ও আদেশ
	repaired the project roads and submitted muster-roll to
	P. I. O. who refused to accept the same and as such
	accused Amezuddin submitted muster-roll to Upazilla
	Chairman Hasem Reja and Steno Jahangir Alam
	received the muster-roll and Hasem Reja, Upazilla
	Chairman directed P. I. O. to make adjustment of the
	wheat. P. W. 1 denied that suggestion.
	P. W. 2 Nazimuddin stated in his chief that
	accused Amezuddin lifted 8.900 Mstric Tons of wheat by
	virtue of two D. O. letters. Defence did not cross-
	examine him.
	P. W. 3 stated in his chief that he sent an
	allegation petition Ext. 1 to D. A. B. Department. P. W. 3
	stated in his cross-examination that on 25.10.91 he
	visited the project roads. Learned Lawyer for the
	accused person suggested P. W. 3 that he did not visit
	the project locality. P. W. 3 denied that suggestion. P.
	W. 3 admitted in his croo-examination that Ext. Ka and
	Ka/1 were issued by Thana Nirbahi Officer and in which
	he (TNO) stated that some protions of the work of the
	project was performed by accused Amezudding.
	P. W 4 Moslem Mia stated in his chief that he
	visited the project roads and submitted report Ext. 8. P.
	W. 4 stated in his cross-examination that on 29.07.91
	accused Amezuddin lifted wheat allotted for the projects
	and he visited project roads on 10.09.91. Learned
	Lawyer for the accused person suggested P. W. 4 that
	the report submitted by him (P. W. 4) is false. P. W. 4
	denied that suggestion. Learned Lawyer for the accused
	person also suggested P. W. 4 that as accd. Amezuddin
	could not satisfy his (P. W. 4) demand as such he
	submitted report against accused Amezuddin. P. W. 4
	denied that suggestion P. W. 4 admitted in his cross-

ক্রমিক নং	তারিখ	নোট ও আদেশ
		examination that he created a relation with a female of
		Rasulpur village and that dispute was solved in
		exchange of Tk. 8,000.00. Learned Lawyer for the
		accused person suggested P. W. 4 that accused
		Amezuddin realized Tk. 8,000.00 from him in respect of
		occurrence regarding the woman and as such he had
		enmity with accused Amezuddin. P. W. 4 denied that
		suggestion.
		P. W. 5 Abdul Gafur stated in his chief that
		accused Amezuddin performed the repairing work of the
		two projects roads properly. Ld. Special P. P. declared
		him hostile and cross-examined him. Ld. Special P. P.
		suggested P. W. 5 to the effect that accused Amezuddin
		did not perform the work of the projects. P. W. 5 denied
		that suggestion. Ld. Special P. P. also suggested P. W. 5
		that he is deposing falsely by the request of accused
		Amezuddin. P. W. 5 denied that suggestion. P. W. 5
		stated in his cross-examination that P. I. O. Moslem
		Uddin cancelled the appointment of Amezuddin as
		Project Chairman and appointed him (P.W.5) as Project
		Chairman but subsequently accused Amezuddin was
		appointed as Project Chairman for distributing wheat
		among distressed mothers through Court.
		P. W. 6 Khalilur Rahman stated in his chief that
		accused Amezuddin performed the project work
		correctly. Ld. Spl. P. P. declared him hostile and cross-
		examined him. Ld. P. P. suggested P. W. 6 that accused
		Amezuddin did not perform any project wrok and he is
		deposing falsely by the request of accused Amezuddin. P.
		W. 6 denied that suggestion.
		P. W. 7 Md. Golam Ahad was tendered by
		prosecution and cross-examination was declined by the
		defence.

ক্রমিক নং	তারিখ	নোট ও আদেশ
		P. W. 8 Majaharul Haque is a seizure list witness.
		P. W. 9 S. M. Sultan Zahangir stated in his chief
		that he is Steno-Typist of Badalgachi Thana Nirbahi
		Office and he brought resolution book containing
		Resolution dated 24.07.91. P. W. 9 stated in his cross-
		examination that the resolution which was written in
		Resolution Book at page 267 to 269 was written by him
		as per direction of Upazilla Chairman Hasem Reja. P.
		W. 9 admitted in his cross-examination that accused
		Amezuddin Submitted two muster rolls to Upazilla
		Chairman Mr. Hasem Reja in his presence who marked
		the muster rolls to P. I. O.
		P. W. 10 Abdus Salam was tendered by
		prosecution and cross-examination was declined by the
		defence.
		P. W. 11 Manjur Rahman is also a seizure list
		witness and he stated both in his chief and cross-
		examination that Md. Abdus Salam Ali Molla A/I seized
		some papers in his presence and P. I. O. Moslem Ali.
		P. W. 12 Amjad Hossain stated both in his chief
		and cross-examination that Abdus Salam Ali Molla
		seized some documents by seizure list Ext. 11 in his
		presence from P. I. O. Office, Badalgachi.
		P. W. 13 Abdul Jabbar stated both in his chief and
		cross-examination that Abdus Salam Ali Molla seized
		some documents in his presence by seizure list Ext. 12.
		P. W. 8 Md. majaharul Haque stated in his cross-
		examination that Hashem Reja (Tagar) Ex. Chairman of
		Badalgachi Upazila Parishad was shoot to death on
		03.06.94. It is mentioned in Resolution dated 24.07.91
		that though Project Implementation Officer raised
		objection against few points of resolution inspite of that
		he wrote that the Resolution was passed unanimously.

ক্রমিক নং তারিখ নোট ও আদেশ From such uttering in the resolution it seems to me that Hashed Reja (Tagar) Ex. Chairman of Badalgachi Upazilla Parishad did not give any importance to the uttering of P. I. O. As Hashem Reja (Tagar) did not give any importance of the decision of P. I. O. it was possible on his part to appoint accused Amejuddin as Chairman of so many projects after raising allegations by P, I. O. against accused Amejuddin. Learned Lawyer for accused Amejuddin argued that as there was no allegation against accused Amejuddin so he was subsequently appointed as Chairman of so many projects. The Ld. Special P. P. agrued that Hashem Reja (Tagar) was a whimsical man, so it was possible on his part to appoint accused Amejuddin as Chairman of so many projects though there was allegation of

part to appoint accused Amejuddin as Chairman of so many projects though there was allegation of misappropriation of wheat of disputed projects. I agree with the view of Learned Special P. P.

P. W. 5 Abdul Gafur and P. W. 6 Khalilur Rahman stated in their chief and cross-examination that accused

P. W. 5 Abdul Gafur and P. W. 6 Khalilur Rahman stated in their chief and cross-examination that accused Amejuddin performed the earth work of the projects properly. As P. Ws. 5 and 6 are not Technical man so it is not possible on their part to state whether the earth work was done properly. It is possible on their (P. W. 5 and 6) part to say that the earth work was done properly on seeing part performance of earth work. Moreover, T. N. O. of Bangladeshi Upazila and Dist. Relief and Rehabilitation Officer had no enmith with accused Amejuddin and they are independent man. মেমো নং- টি, আর/প্রতিবেদন-১৫/১০/৯০-৯২/২০৯(১০) তারিখ ১৭.০৮.৯২ i.e. Ext. Ka and Ka/l was issued by T. N. O Bangladesh to eccused Amejuddin Ex. U. P. Chairman (Project Chairman of T. R. Project No. 69 and 70). Ext. Ka and

ক্রমিক নং	তারিখ	নোট ও আদেশ
		Ka/1 combinedly reads as follows:-
		বিষয়ঃ অব্যয়িত ২.৩২০+৩.৮০০ মেঃ টন গমের মূল্য সরকারী
		কোষাগারে ফেরৎ প্রসংগে।
		সূত্রঃ ২১.০৭.৯২ ইং তারিখে অনুষ্টিত সভার সিদ্ধান্ত অনুযায়ী।
		আপনাকে ১৯৯০-৯১ সালের টি. আর. কর্মসূচীর আওতায় প্রকল্প নং-
		৬৯ এবং ৭০ যথাক্রমে উত্তর রামপুর হইতে শ্যামপুর পর্যন্ত রাস্তা মেরামত এবং
		বামনপড়া হইতে উত্তর রামপুর পর্যন্ত রাস্তা মেরামতের জন্য যথাক্রমে ৬.০০
		মেঃ টন গম এবং ২.৯০ মেঃ টন গম বরাদ্দ প্রদান করা হইয়াছিল। উল্লেখিত
		কাজ সম্পাদনে অনিয়মের অভিযোগ উত্থাপিত হওয়ায় ১৯৯১ সালে নিয়
		স্বাক্ষরকারীকে আহবায়ক করিয়া তদন্ত টিম গঠন করা হয়। তদন্ত টিম
		পরিদর্শনকালে আপনার প্রকল্পদ্বয়ের ২০% কাজ দেখিতে পায়। কাজের
		অনুপাতে গম খরচের পরিমান দাঁড়ায় যথাক্রমে ১.২০০ মেঃ টন এবং ০.৫৮০
		মেঃ টন। হিসাব অনুযায়ী আপনার নিকট ৬.১২০= (৩.৮০০+২.৩২০) মেঃ
		টন গম অব্যয়িত থাকে। অব্যয়িত গমের মূল্য সরকারী বিধান অনুযায়ী ৬৫
		(অপাঠ্য) টাকা রেভিনিউ খাতে জাম প্রদান করিয়া নিমু স্বাক্ষরকারীকে অবহিত
		করার জন্য অনুরোধ করা গেল। পত্র প্রাপ্তির ১০ (দশ) দিনের মধ্যে গমের মূল্য
		ফেরৎ প্রদানে ব্যর্থ হইলে আপনার বিরুদ্ধে আইনানুগ ব্যবস্থা গ্রহন করা হইবে।
		Learned Lawyer for the accused person did not
		suggest any P. W. that the report Exts. Ka and Ka/l is
		not correct. So in my view the report Exts. Ka and Ka/1
		are correct.
		Man may tell a lie but circumstances it is well
		proved that 6.12 Matric Tons of wheat was unspent and
		the price of that wheat was Tk. 38,800/80
		(=6.12X6340/00).
		Considering the facts, circumstances and
		evidences on record I am in view that accused
		Amejuddin misappropriated 6.12 Matric Tons of wheat
		and the price of which was Taka 38,800.80 and he is
		guilty U/S 409 of Penal Code R/W section 5(2) of Act
		II/47. I deceet to convict accused Amejuddin Rigorous
		Imprisonment for one year with a fine of Taka 38,800.80
		in default to pay the fine he is to suffer another three

ক্রমিক নং	তারিখ	নোট ও আদেশ
		months rigorous imprisonment U/S. 409 of Penal Code.
		Hence it is,
		<u>Ordered</u>
		that accused Md. Amejuddin is found guilty U/S 40
		of Penal Code R/W section 5(2) of Act II/47. I convict
		and sentence accused Amejuddin to suffer rigorous
		imprisonment for one year with fine of Tk. 38,800.80
		(Thirty eight thousand eight hundred and paisa eighty)
		only in default to pay the fine he is to suffer rigorous
		imprisonment for another three months under section
		409 of Penal Code.
		No separate sentence is passed U/S 5(2) of Act
		II/47.
		Dictated and corrected by me.
		Md. Kabir Ul Islam Md. Kabir Ul Islam 10.10.94 10.10.94 Divisional Special Judge, Divisional Special Judge, Rajshahi Division, Rajshahi Rajshahi Division, Rajshahi
		প্রসিকিউশন পক্ষের সকল স্বাক্ষীগণের সাক্ষ্য সবিস্তারে পর্যালোচনায় প্রতীয়মান যে,
		সকল সাক্ষ্যগন পরস্পর পরস্পরকে সমর্থন করে বক্তব্য প্রদান করে প্রসিকিউশন পক্ষের
		অভিযোগ সন্দেহাতীতভাবে প্রমাণ করতে সক্ষম হয়েছেন। আপীল আদালতের রায় পর্যালোচনায়
		কোন প্রকার ত্রুটি বিচ্যুতি পরিলক্ষিত হয় না। বিজ্ঞ আপীল আদালতের রায় ও দন্ডাদেশ সঠিক
		এবং ন্যায়ানুগ হয়েছে। অত্র আপীলটি নামঞ্জুর যোগ্য।
		অতএব, আদেশ হয় যে, অত্র আপীলটি নামঞ্জুর করা হলো।
		বিজ্ঞ বিভাগীয় বিশেষ জজ, রাজশাহী বিভাগ, রাজশাহী কর্তৃক বিশেষ মোকদ্দমা নং-
		১০/১৯৯৩ (নওগাঁ)-এ প্রদত্ত বিগত ইংরেজী ১০.১০.১৯৯৪ তারিখে রায় ও দভাদেশ এতদ্বারা
		বহাল রাখা হলো।
		অত্র রায় ও আদেশের অনুলিপি প্রাপ্তির ৩০(ত্রিশ) দিনের মধ্যে আসামী-
		আপীলকারীকে বিজ্ঞ বিচারিক আদালতে আত্মসমর্পনের নির্দেশ প্রদান করা হলো। ব্যর্থতায় বিজ্ঞ
		বিচারিক আদালত আসামীকে গ্রেফতারের প্রয়োজনীয় পদক্ষেপ গ্রহন করবেন।
		অত্র রায়ের অনুলিপিসহ অধস্তন আদালতের নথি সংশ্লিষ্ট আদালতে দ্রুত প্রেরণ করা হউক।
		(বিচারপতি মোঃ আশরাফুল কামাল)