

Present:  
Mr. Justice Borhanuddin  
and  
Mr. Justice Md. Ruhul Quddus

Govt. Criminal Appeal No.24 of 2004

The State  
... Appellant  
-Versus-

Sk. Arif Newaz and others  
... Respondents

Mr. Md. Monwar Hossain, A.A.G.  
... for the appellant

Mr. Md. Abdur Razzak with  
Ms. Saira Fairoz and  
Ms. Afifa Begum, Advocates  
... for the respondents

Judgment on 25.5.2011

*Md. Ruhul Quddus, J:*

This appeal under section 10 of the Criminal Law Amendment Act is directed against judgment and order of acquittal dated 30.9.2003 passed by the Divisional Special Judge, Khulna in Special Case No.13 of 2003.

Facts relevant for disposal of the appeal, in brief, are that the informant Md. Zahid Hossain, an Inspector of the then Bureau of Anti-Corruption lodged an *ejahar* with Batiaghata

Police Station, Khulna on 30.6.2002 alleging *inter alia*, that the respondents had misappropriated fifteen metric tons of rice worth Taka 1,87,500/- against three projects under Test Relief Program namely, earth filling at southern side of Ladies Hall in Khulna University, earth filling at south-eastern side of the said Hall, and extension of a lake inside the University. There were three committees comprising the respondents to implement the said projects. They took delivery of rice against the said projects, but without doing any earth-work, misappropriated the entire rice in collusion with each other.

The said *ejahar* gave rise to Batiaghata Police Station Case No.20 dated 30.6.2002 under section 409/109 of the Penal Code read with section 5(2) of the Prevention of the Corruption Act, 1947. Two Inspectors of the then Bureau of Anti-Corruption successively investigated the case and finally one of them submitted charge sheet on 22.1.2003 against the respondents under sections 409/467/468/109 of the Penal Code read with section 5(2) of the Prevention of Corruption Act.

The case after being ready for trial, was sent to the Senior Special Judge, Khulna wherefrom it was sent to the Divisional Special Judge, Khulna, and was renumbered as Special Case

No.13 of 2003. The learned Divisional Special Judge framed charge against the respondents under the said sections of law by order dated 15.4.2003 and proceeded with trial. The prosecution in order to prove its case examined as many as fifteen witnesses. After conclusion of trial, the Divisional Special Judge, Khulna passed the impugned judgment and order of acquittal on 30.9.2003 as aforesaid. The State represented by the Solicitor preferred the instant criminal appeal against the said judgment an order of acquittal.

Mr. Md. Monwar Hossain, learned Assistant Attorney General appearing for the State-appellant pressed the appeal and submits that by the evidence of P.Ws.1, 3 and 15 the prosecution case has been proved against the acquitted respondents, but the learned Divisional Special Judge considering the evidence in proper perspective, acquitted them on the grounds that most of the prosecution witnesses did not support the prosecution case. In doing so the learned Judge failed to consider that conviction can be well founded even on a single witness, if he is found disinterested and his evidence is fully reliable, not shaken, self-contained and complete. The learned Judge also failed to understand that the witnesses, who

did not support the prosecution case, being local people, were influenced by the respondents.

On the other hand, Mr. Md. Abdur Razzak, learned Advocate appearing for the respondents submits that the Divisional Special Judge sifted the evidence carefully and held that the allegation brought against them was not proved. The case was filed after one year of completion of the projects and it was initiated malafide without any allegation of misappropriation. The facts and circumstances of the case clearly indicate that the University Administration was hostile towards the respondents. It appears from the evidence that the Informant (P.W.1) and Investigating Officer (P.W.15) had no personal knowledge about the subject matter of the case. They did not know and visit the place of occurrence, except once. The basis of implicating them (respondents) in the present case was that the workers, who worked on master roll to implement the projects, were not available at their given addresses. But it came out from the evidence of P.Ws.9, 11-14 under what circumstances their (workers') whereabouts were not traceable. Therefore, the learned Judge rightly acquitted the respondents

and there is nothing to interfere with the impugned judgment and order.

We have examined the evidence on records. P.W.1 Md. Zahid Hossain, the Informant and an Inspector of the then Bureau of Anti-Corruption stated that the Acting Registrar of Khulna University wrote a letter to the Director General of the Bureau to enquire whether any irregularities in implementation of the projects were there. In response thereto, a two member Committee including him (P.W.1) was formed. During enquiry he examined all concerned with the projects and found that no earth-work was done. In cross-examination he stated that initially he did not know the project areas and the University authority helped him to find out the areas. He further stated that he saw a lake, but found no sign of earth-work there. He could not reply whether earlier it was a small canal and subsequently was extended to a lake.

P.W.2 Md. Lokman Ahmed, the then Officer-in-charge of Batiaghata Police Station being a formal witness deposed that as an Officer-in-charge of the police station he filled up the prescribed form of first information report.

P.W.3 Md. Amir Ali, the then Acting Registrar of Khulna University stated that earlier a committee headed by Dr. Rafiqul Islam was formed to enquire into the matter, but since no expert-member was included in the said committee, he failed to hold any enquiry. Thereafter the Syndicate took decision to refer the matter to the then Bureau of Anti-Corruption. In pursuance thereto, he (P.W.3) wrote a letter to the Bureau for holding an enquiry whether any earth-work against the Projects was done. There was no allegation of misappropriation in the said letter, upon which the Bureau had initiated enquiry against the respondents. In cross-examination he stated that he was willing to be the Registrar of Khulna University and further stated that he saw the workers to work for two projects under Food for Work Program. He, however, denied that he saw the entire projects to have been done.

P.W.4 Mohammed Ali, the then Caretaker of Khan Jahan Ali Hall, Khulna University stated that he saw earth-work against all the projects. In cross-examination he stated that the lake was made wider in 2000-2001. Subsequently, it was leased out for fishing. There was earth-filling at the southern and south-eastern sides of the Ladies Hall as well. He further stated

that the then Vice-Chancellor Professor Dr. Nazrul Islam himself had supervised the projects. The workers working for the projects were residing inside the University erecting *golpata*-shed beside the Bungalow of Vice-Chancellor.

P.W.5 S. M. Atiar Rahman, an Assistant Registrar of Khulna University supported the prosecution case but in cross-examination stated that the lake was made wider by earth-cutting and the southern and south-eastern sides of the Ladies Hall were filled up by earth. He saw 20/25 workers to work inside the University for 15/20 days. He further stated that during the projects implementation period, Professor S. M. Nazrul Islam was the Vice-Chancellor. The projects were completed during his tenure. The Vice-Chancellor accompanied by him (P.W.5) and sometimes by the Engineers used to supervise the projects.

P.W.6 Md. Tayabur Rahman, the Project Implementation Officer of Batiaghata, Khulna stated that the informant had seized records of ten projects from his office. In cross-examination he stated that out of curiosity he had visited the projects area and saw the lake extended and two other places filled up by earth.

P.W.7 Md. Nurul Haque, an Office-Assistant to the Project Implementation Officer and a seizure list witness stated that accused Abdur Rahim, the immediate past Project Implementation Officer (respondent No.6) was responsible for implementation of the projects. The said Abdur Rahim had inspected the projects several times, when he (P.W.7) accompanied him and saw the projects were in progress. He also accompanied P.W.6, the successor Project Implementation Officer in visiting the project areas.

P.W.8 Sheikh Mojibur Rahman, Officer-in-charge of Batiaghata food godown deposed as a formal witness in respect of seizure of documents from his office. P.W.9 Jagadish Mondal, a village defense police stated that during investigation, one plain dressed officer showed him two master rolls and asked him whether he knew 5/6 persons named in the said rolls. He replied that those people were no more residing in the area. They were seasonal workers. After the season was over, they left. In cross-examination he had pointed out a shed, where the said seasonal workers used to reside.

P.W.10 Abdur Rashid, District Election Officer proved the voter list of the area. In cross-examination he stated that at

the time of preparing the list, the people absent in the area were not enlisted as voters.

P.W.11 Bidhan Chandra Roy, an elected Member of Ward No.5 of Jalma Union Parishad stated that in 2000-2001 some projects under Test Relief Program were commenced in Khulna University. The then Bureau of Anti-Corruption sent a list of some persons to the Union Parishad and made a query whether they were residents of that area. The Chairman asked him about their whereabouts, when he replied that those persons were no more residing in the area. In cross-examination he stated that many workers from Koyra, Pikegacha, Shyamnagor and Ashashuni of Shatkhira District had come to their area in dry season. They had worked up to Autumn and thereafter left. During that period the said workers used the places of their temporary residence as their addresses.

P.W.12 Nikhil Ranjan Mallik, a former Union Parishad Member stated that an Officer of the then Bureau of Anti-Corruption sent him a list with names of some persons and asked whether he knew them. He had replied that he did not know them except one, who was a local inhabitant. In cross-examination he stated that many workers had come to their area

as seasonal workers and used the places of their temporary residence as their addresses.

P.W.13 Firoza Rahman Mina, a sitting Woman-Member, was tendered by the prosecution. In cross-examination by the defense she stated that she saw the projects to have been completed. The Investigating Officer had called her to the University, showed a list of some persons and asked whether she knew them. She replied that she personally knew fifteen persons of them.

P.W.14 Mohananda Biswas was tendered by the prosecution and cross-examined by the defense. In cross-examination he stated that he was the Chairman of Jalma Union Parishad in 2000-2001. On receipt of a notice from an Officer of the Bureau of Anti-Corruption, he met him and informed him that half of the persons named in master roll were local people. The remaining half were seasonal workers, who came to the area for their livelihoods. They had resided in *golpata*-shed and left the area after the season was over. He further stated that he himself saw the works to have been done in 2000-2001.

P.W.15 Md. Abdur Rab Khan, one of the Investigating Officers who submitted charge sheet stated that he had recorded statement of the witnesses under section 161 of the Code of

Criminal Procedure, seized documents and examined records. In cross-examination he stated that he had investigated another case against the respondents in respect of misappropriation of one hundred metric tons of rice for some other projects under Food for Work Program, and submitted final report in their favour. He could not say as to where the projects were located. He further stated that it is not possible for him to say whether any earth-work was done really, because he had no idea about the previous measurement of the project areas.

It appears from the impugned judgment and order that the learned Divisional Special Judge, Khulna discussed and considered all the evidence and acquitted the respondents. An appeal against acquittal may be entertained when the impugned judgment is perverse, or so unreasonable that its maintenance would amount to miscarriage of justice. Any such appeal can be allowed only in exceptional circumstances, when the inference of guilt is irresistible. In the present case, as discussed above, the evidence of P.Ws.4-7 and 13-14 show the projects were completed in 2000-2001 under supervision of the then Vice-Chancellor of Khulna University, Professor S. M. Nazrul Islam. After his tenure was over, the case was initiated against the respondents after one year of completion of the projects. It

further appears from the evidence of P.Ws.9, 11-14 that some of the workers, whose names appeared in the mater roll, were locals and recognized by the elected Members and Chairman of the concerned Union Parishad. The remaining names were of the seasonal workers, who had come to Khulna University area from different Upazilas of Shatkhira, worked there as day-laborers and left the area after the season was over. In the master rolls, the places of their temporary residence were used as their addresses.

The Investigating Officer himself could not say as to where the projects were located, and admitted that it was not possible for him to say whether any earth-work was done really, because he had no idea about the previous measurement of the project areas. It is also questionable as to why the Bureau of Anti-Corruption initiated an enquiry without any specific allegation of misappropriation, and why the University without any initial enquiry by itself would request the Bureau for holding an enquiry whether there were any irregularities. It makes the prosecution case seriously doubtful about the motive of the University Administration.

The facts and circumstances, and the evidence and other materials on records in the present case do not lead us to draw

any inference of guilt against the respondents. We also do not find any illegality in the impugned judgment and order of acquittal, which calls for any interference.

In the result, the appeal is dismissed. The impugned judgment and order of acquittal dated 30.9.2003 passed by the Divisional Special Judge, Khulna in Special Tribunal Case No. 13 of 2003 is affirmed.

Send down the lower Court records.

Borhanuddin, J:

I agree.