

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

Govt. Criminal Appeal No.26 of 2004

The State

... Appellant
 -Versus-

Md. Shah Nowroj 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.18 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 ten metric tons of rice worth Taka 1,25,000/- against two projects namely, earth filling at the south and west sides of the play ground in Khulna University. There were two committees comprising the respondents to implement the said projects. Without doing any earth-work, the respondents had misappropriated the entire rice in collusion with each other.

The said *ejahar* gave rise to Batiaghata Police Station Case No.18 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 22.2.2003 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 registered as Special Case No.18 of 2003. The learned Divisional Special Judge framed charge against the respondents under the said sections of law by order dated 15.5.2003 and proceeded with trial. The prosecution

in order to prove its case examined as many as sixteen witnesses. After conclusion of trial, the learned Judge pronounced the 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.2, 4 and 16 the prosecution case has been proved against the respondents, but the learned Divisional Special Judge without 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 learned 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.2) and Investigating Officer (P.W.16) 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.10, 12-15 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. 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 the first information report.

P.W.2 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.2) was formed. During enquiry he found that the respondents took delivery of rice from the godown, but without doing any earth-work had misappropriated the rice in collusion with each other. In cross-examination he stated that he had started investigation after one year of the project-period was over. He did not know the project areas and that he did not take measurement of any work.

P.W.3 Golam Mostafa was tendered by the prosecution and the defense declined to cross-examine him. P.W.4 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 University Syndicate took decision to refer the matter to the then Bureau of Anti-Corruption. In pursuance thereto, he (P.W.4) wrote a letter to the Bureau for holding an enquiry whether any earth-work against the Projects was done. The respondents took delivery of the rice, but did not bring it to the University and misappropriated the same by showing forged master roll. 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.5 Mohammed Ali stated that he was the Caretaker of Khan Jahan Ali Hall, Khulna University in 2000-2001. He could not say anything about the projects and stated that he did not give any statement to the Investigating Officer. In cross-examination, he stated that the play ground in Khulna University was developed by earth-filling from western side to northern side of Khulna Road in 2000-2001. The then Vice-

Chancellor Professor Nazrul Islam along with Assistant Registrar Atiar Rahman used to supervise the projects. He further stated that the workers were residing inside the University erecting *golpata*-shed beside the Bungalow of Vice-Chancellor. He also saw Project Implementation Officer Md. Abdur Rahim Shaikh (respondent No.5) to supervise the projects.

P.W.6 S. M. Atiar Rahman, an Assistant Registrar of Khulna University supported the prosecution case, but in cross-examination stated that the south and western sides of the play ground were filled up by earth. At the relevant time he saw 25/30 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 Vice-Chancellor accompanied by him (P.W.5) and sometimes by the Engineers used to supervise the projects.

P.W.7 Md. Tayabur Rahman, the Project Implementation Officer of Batiaghata, Khulna stated that the Investigating Officer had seized records of ten projects and two mater rolls from his office. In cross-examination he stated that he learnt from the official records that his predecessor Project

Implementation Officer used to supervise the projects. Out of curiosity he had visited both the projects and saw the areas were filled up by earth. During the visit, he was accompanied by his Office-Assistant Nurul Haque.

P.W.8 Md. Nurul Haque, an Office-Assistant to the Project Implementation Officer and a seizure list witness stated in cross-examination that accused Abdur Rahim, the immediate past Project Implementation Officer (respondent No.5) was responsible for implementation of the projects. The said Abdur Rahim had inspected the projects several times, when he (P.W.8) accompanied him and saw the projects were in progress. He also accompanied Md. Tayabur Rahman, the successor Project Implementation Officer in visiting the project areas.

P.W.9 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.10 Jagadish Mondal, a village defense police Of Jalma Union Parishad 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 they were

no more residing in the area. They were seasonal workers. After the season was over, they left. In cross-examination he stated that during their stay at village Jalma, they used it as their addresses. He also pointed out a shed where the seasonal workers had resided.

P.W.11 Abdur Rashid, District Election Officer proved the voter list of Jalma Union Parishad. In cross-examination he stated that at the time of preparing the list, some of the people in the area would have not been enlisted as voters for many reasons.

P.W.12 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. An Officer had come from Dhaka and gave a list of some persons to the Chairman of the Union Parishad to enquire whether they were residents of the area. It was informed to him that those persons were no more residing in the area. In cross-examination he stated that many workers from Koyra, Pikegacha and Ashashuni (of Shatkhira District) had come to the 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.13 Nikhil Ranjan Mallik, a former Union Parishad Member stated that the then Bureau of Anti-Corruption had sent him a list of some persons to enquire whether they were residents of that area. He replied that they were not. In cross-examination he stated that one of the persons listed was a Labour *Sarder* at his village. He further stated that many workers had come to the area as seasonal workers and used the places of their temporary residence as their addresses.

P.W.14 Mohananda Biswas, the then Chairman of Jalma Union Parishad was tendered by the prosecution and cross-examined by the defense, when he stated that in 2000-2001 he went to see the projects in Khulna University several times and saw the projects were satisfactorily done. The Investigating Officer sent him a list of some persons and made a query whether they were residents of his Union. He replied in written that about half of them were residents, and the others were seasonal workers, who used their places of temporary residence as their addresses.

P.W.15 Purabi Mondal was tendered by the prosecution and the defense cross-examined him. In cross-examination she

stated that she was a Member of Jalma Union Parishad and she saw the projects to have been done in University area.

P.W.16 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 the records. During Investigation he found prima-facie case against the respondents. 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 further stated that he did not take 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.5-8, 10 and 12-15 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.10, 12-15 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 stated that he did not take measurement of the project areas. Without knowing the previous measurement and without taking the present measurement of a particular project area, it is not possible to arrive at a decision whether any earth-work was done there. 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 Case No. 18 of 2003 is affirmed.

Send down the lower Court records.

Borhanuddin, J:

I agree.