

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 4513 of 2014

Md. Solaiman

... Appellant

-Versus-

The State and another

...Respondents

with

Criminal Appeal No. 4446 of 2014

K K Sorma

...Appellant

-Versus-

The State and another

...Respondents

Mr. Mafizuddin, Advocate

...For the appellant

(In Criminal Appeal No. 4513 of 2014)

No one appears.

...For the appellant

(In Criminal Appeal No. 4446 of 2014)

Ms. Sharmin Hamid, A.A.G with

Mr. Sultan Mahmood Banna, A.A.G

...For the State (In both criminal appeals)

Mr. Md. Omar Farook, Advocate

...For the Respondent No. 2,

Anti-Corruption Commission (In both criminal appeals)

Heard on 28.01.2025, 02.02.2025, 11.02.2025 and
17.02.2025

Judgment delivered on 24.02.2025

This appeal under Section 10 of the Criminal Law Amendment Act, 1958 is directed against the impugned judgment and order of conviction and sentence dated 03.07.2014 passed by Divisional Special Judge, Chittagong in Special Case No. 19 of 2005 arising out of Cox's Bazar Police Station Case No. 07 dated 20.07.1988 corresponding G.R No. 64(B) of 1988 convicting the appellants under Sections 409/420/119 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947 and sentencing them under Section 409 of the Penal Code,

1860 to suffer rigorous imprisonment for 2(two) years and fine of Tk. 3,000, in default, to suffer rigorous imprisonment for 6(six) months more and sentencing them under Section 420 of the Penal Code, 1860 to suffer rigorous imprisonment for 2(two) years and fine of Tk. 3,000, in default, to suffer rigorous imprisonment for 6(six) months and sentencing them under Section 119 of the Penal Code, 1860 to suffer rigorous imprisonment for 2(two) years and fine of Tk. 3,000, in default, to suffer rigorous imprisonment for 6(six) months and confiscating the misappropriated amount Tk. 1,26,812.45.

The prosecution case, in short, is that the accused Md. Solaiman was the Cashier of Pubabli Bank Limited, Cox's Bazar Branch and the accused K K Sorma was the Upper Division Assistant of Power Development Board, Cox's Bazar. They received the electric bills from the customer putting the seal “নগদ গ্রহন” on the bill making entry in the customer khatian as Cashier of the Pubali Bank Limited, Cox's Bazar Branch. The accused Md. Solaiman was assigned to receive the bills and posted them in the ledger book and the daily statement. The accused persons received total electric bills of Tk. 3,57,420.38 but without posting in the ledger book and the statement of the bank in connivance with each other misappropriated the said amount.

Md. Shahidullah, Inspector of the Bureau of Anti-Corruption, Cox's Bazar took up the investigation of the case. During the investigation, he visited the place of occurrence, seized the documents and recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898 and after completing the investigation submitted the memo of evidence against the accused persons. Thereafter, he was transferred. After that, Inspector Abul Kalam Azad submitted a charge sheet against the accused persons 1. Solaiman, 2. Nurul Amin, 3. K K Sorma, 4. Abdul Jabbar, 5. Mosharaf Hossain, 6. Nurul Kabir, 7. Shahadat Hossain and 8. Zainul Abedin under Sections 420/ 406/ 409/

218/ 109/119 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947.

After that, the learned Magistrate sent the case record to the Senior Special Judge, Cox's Bazar who took cognizance of the offence against the said accused-persons under Sections 420/ 406/ 409/ 218/ 109/119 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947 and submitted the final report in favour of the accused Nurul Islam. After that, the co-accused Shahadat Hossain died.

The Senior Special Judge, Cox's Bazar sent the case to the Divisional Special Judge, Chittagong for trial who framed the charge against the accused Md. Solaiman and K K Sorma under Sections 420/ 406/ 409/ 218/ 109/119 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947 and discharged the accused Nurul Amin, Abdul Jabbar, Mosharaf Hossain, Zainul Abedin and Nurul Kabir. The charge framed against the accused persons was read over to them and they pleaded not guilty to the charge and claimed to be tried following the law.

Thereafter, the trial Court by order dated 19.02.2003 directed the Bureau of Anti-Corruption to submit charge sheet regarding the misappropriated amount of each year. After that, P.W. 10 Md. Abdul Awal was appointed as the Investigating Officer and after completing the investigation, he found that the accused persons misappropriated total Tk. 1,37,081/25 from January 1985 to December 1985 and submitted supplementary charge sheet against the accused persons under Sections 409/ 420/ 467/ 468/ 218/ 119/ 447(Ka)/109 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947.

Thereafter, the Senior Special Judge, Cox's Bazar again took cognizance of the offence against the accused Md. Solaiman and K K Sorma under Sections 420/ 406/ 409/ 219/ 109/119 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947 and sent the case to the Divisional Special Judge, Chittagong. The Divisional

Special Judge, Chittagong again framed the charge against the accused Md. Solaiman and K K Sorma under Sections 409/ 420/ 406/ 218/ 109/119 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947 which was read over and explained to them and they pleaded not guilty to the charge. The prosecution examined total 11(eleven) witnesses to prove the charge against the accused persons and the defense cross-examined the prosecution witnesses. After examination of the prosecution witnesses, the accused persons were examined under Section 342 of the Code of Criminal Procedure, 1898 and they declined to adduce any D.W. but stated that they would submit the document.

P.W. 1 Abdur Rahim is the Security Guard, at Pubali Bank Ltd, Bahar Chhora Branch, Cox's Bazar. He stated that from 1984 to 1988 he discharged his duty as Security Guard of Pubali Bank Ltd, Cox's Bazar Branch. He denied the suggestion that occasionally he received the bills from the customers and handed over those bills to the cashier. The accused Krishno Kumar Sorma occasionally came to the bank but he could not say the reason. At that time, P.W. 1 was declared hostile. During cross-examination on behalf of the prosecution, he denied the suggestion that due to the undue influence of the accused, he deposed falsely. During cross-examination on behalf of the accused Krishno Kumar Sorma, he stated that there is an officer of the bank to receive the electric bills. The accused Krishno Kumar Sorma is an employee of PDB. He affirmed that he did not see the accused Krishno Kumar Sorma receive the electric bills. During cross-examination, on behalf of the accused Solaiman, he stated that he never received any electric bills and he also did not hand over the bills to accused Solaiman.

P.W. 2 Md. Anayet Ali is the Assistant Customer Supervisor, PDB, Cox's Bazar. He stated that from 1970 to 1983 he discharged his duty as Meter Reader of PDB, Cox's Bazar. From June 1987 to till today he has been discharging his duty as Assistant Customer Supervisor. While he was discharging his duty as Meter Reader, he visited the meter,

prepared the bills and sent those bills to the customers. He did not hand over the bill of any customer to K.K Sorma and Abdul Jabbar. He never told them to post the bill in the ledger. During cross-examination, he stated that accused K.K Sorma was the Upper Division Assistant of PDB. He could not say whether he received any bill in the bank. The accused Solaiman is not personally known to him.

P.W. 3 Bipul Kanti Saha is the Meter Inspector PDB Cox's Bazar. He stated that from 02.11.1985 to today he is discharging his duty as Meter Reader. Now he is discharging his duty as Inspector of Meter. As a Meter Reader, he used to inspect the meter and prepare the bills and hand over those bills to the customers. He did not prepare the statement of the bank and he also did not hand over any bill to the accused K.K Sorma. He sent the bill to the customers, not to the accused persons. He could not say whether the accused K.K Sorma received the electric bills in the bank. The accused K.K Sorma discharged his duty as Upper Division Assistant of PDB, Cox's Bazar. The accused Solaiman is not personally known to him.

P.W. 4 Md. Jahurul Haque Chowdhury is the Assistant Cashier of Pubali Bank Ltd, Cox's Bazar Branch. He stated that from 1983 to 1988 he discharged his duty as Assistant Cashier of Pubali Bank Ltd, Cox's Bazar Branch. The bills of PDB used to be received through the Pubali Bank Ltd, Cox's Bazar Branch. At the time of receiving the bill, the accused K.K Sorma used to present there. The accused K.K Sorma received the bill sitting in different counters. The accused K.K. Sorma signed the bill. He used to prepare the statement regarding the receipt of the bill. The money for the bills was deposited in the bank account. The accused K.K. Sorma received the bill and misappropriated it without depositing the bill in the bank. During cross-examination on behalf of the accused K.K Sorma, he stated that he did not prepare the statement. He denied the suggestion that the accused K.K Sorma received the bill as a false and concocted story.

P.W. 5 Syed Md. Shahidullah stated that on 20.07.88 he discharged his duty as Inspector of D.A.B, Cox's Bazar. During enquiry, it was detected that the accused Md. Solaiman, Cashier of the Pubali Bank Ltd, Cox's Bazar Branch with the help of the accused Krishno Kumar Sorma received the electric bills of PDB from March 1983 and without depositing the said bills misappropriated. The accused K.K Sorma used to receive the bills from the customer putting the seal of the bank and without transferring the money misappropriated. In the customer Khaitan, the accused persons made the entry of the bills but in the bank account, the bills were not mentioned. The accused persons misappropriated total Tk. 3,57,726.08. He stated that the accused Solaiman, Krishna Kumar Sorma, Abdul Jabbar, Nurul Amin, Nurul Islam, and Hossain in connivance with each other committed a breach of trust and misappropriated the recovered bills of the PDB. He lodged the FIR as exhibit 1 and his signature as exhibit 1/1. Based on E.R No. 55/88, he seized documents. He proved the E.R No. 55/88 as exhibit 3. He seized electric bill No. 199976 dated 15.01.85 of Rana Barof Kal. He proved the seizure list as exhibit 4 and his signature as exhibit 4/1. He proved the relevant electric bill as exhibit 5. On 30.01.89 he seized 02 electric bills. He proved the seizure list as exhibit 2 and his signature as exhibit 2/A. He proved the bills mentioned in exhibit 2 as Exhibit 1/Ka. On 16.07.1988 he seized bill No. 48840 dated 3.1.1986, bill No. 199847 dated 03.03.85, and bill No. 752245 dated 31.11.85 and prepared the seizure list. He proved the seizure list as exhibit 6 and his signature on the seizure list as exhibit 6/1. He proved the alamat as material exhibits 7 series. On 15.06.88 he seized bill No. 33587 dated 09.01.86, bill No. 284415 dated 09.01.86, electric bill No. 485977 dated 09.01.86. On the same date, he also seized another bill and prepared the seizure list. He proved the seizure list as exhibit 8 and his signature on the seizure list as exhibit 8/1. He proved the seized bill as material exhibits 9 series. On 07.07.1988, he seized bill No. 343541 dated 23.07.85 and bill No.

196039 dated 10.01.86. He proved the seizure list as exhibit 10 and his signature on the seizure list as exhibit 10/1. He proved the seized bills as exhibits 11 series. On 04.07.88 he seized an electric bill. He proved the seizure list as exhibit 12 and his signature as exhibit 12/1. He proved the seized bill as exhibit 13. On 24.01.89 he seized 2 bills. He proved the seizure list as exhibit 14 and his signature on the seizure list as exhibit 14/1. He proved the electric bills as exhibits 15 series. On 29.01.89 he seized 5 electric bills. He proved the seizure list as exhibit 16 and his signature as exhibit 16/1. He proved the said bills as exhibit 17 series. On 30.01.89 he seized 4 electric bills. He proved the seizure list as exhibit 18 and his signature on the seizure list as exhibit 18/1. He proved the bills as Exhibit 19. On 07.07.88 he seized a bill. He proved the bill as exhibit 20 and his signature as exhibit 20/1. He proved the seized bill as exhibit 21. On 21.07.88, he seized 9 customer khatian registrars from the office of the Executive Engineer, PDB. He proved the seizure list as exhibit 22 and his signature as exhibit 22/1. He proved the jimmanama as exhibit 23. On 31.01.89 he seized the letter dated 04.07.83 issued by the PDB, Dhaka and the account form C.D. 3 and 4 of PDB. He proved the seizure list as exhibit 24 and his signature on the seizure list as exhibit 24/1. He proved the said letter as Exhibit 25. He proved the seizure list dated 20.02.89 as exhibit 26 and his signature as exhibit 26/1. He seized 2 electric bills and proved said bills as exhibit 27 series. On 06.02.89 he seized 4 electric bills. He proved the seizure list as exhibit 28 and his signature as exhibit 28/1. He proved the electric bills as exhibits 29 series. On 09.03.89, he seized 23 electric bills from the PDB, Cox's Bazar. He proved the seizure list as exhibit 30 and his signature as exhibit 30/1. He proved the alamat as exhibit 31. He proved another seizure list as exhibit 32 his signature as exhibit 32/1 and alamat as exhibit 33 series. He proved another seizure list as exhibit 34 and his signature as exhibit 34/1. He proved the alamat as exhibit 35. On 11.09.89, he seized total of 100 vouchers from Pubali Bank, Cox's

Bazar. He proved a seizure list as exhibit 36 and his signature as exhibit 36/1. He proved the alamat as exhibit 37. He proved the seizure list dated 12.03.89 as exhibit 38 and his signature as exhibit 38/1. He proved the 2 bills from Pubali Bank, Cox's Bazar as exhibit 39 series. He proved the seizure list dated 13.03.89 as exhibit 40 and his signature as exhibit 40/1. He did not find the bank statement of those bills from 1983 to 1986. Those bank statements were preserved with the PDB. After preparing the jimmanama, the statements were handed over to the custody of the PDB. On 11.03.1989 he seized 1 electric bill. He proved the seizure list as exhibit 41 and his signature as exhibit 41/1. He proved the electric bill as exhibit 42. On scrutiny of the alamat, he found that accused Nurul Kabir, Cash Officer Pubali Bank Ltd, Cox's Bazar Branch, Md. Solaiman, Cashier Pubali Bank Ltd, Cox's Bazar, K.K Sorma, Upper Division Assistant, PDB, Cox's Bazar, Md. Shahadat Hossain, Former Manager, Pubali Bank Ltd, Zainul Abedin, Former Manager, Cox's Bazar Branch, Abdul Jabbar, LDA, PDB, Cox's Bazar, Meter Reader Nurul Amin, Junior Account Assistant Md. Mosharraf used to issue the bills of PDB. and instructed K.K Sorma to receive the bills sitting on the counter of the bank putting a seal making entry in the customer khatian without posting in the ledger. The recovered electric bills were not deposited in the public exchequer. Total Tk. 358878 was misappropriated from 1983 to 1986. He submitted the memo of evidence against the said accused persons and he was transferred. After that, Abul Kalam Azad submitted charge sheet in the case. During cross-examination, he stated that K.K Sorma is not an employee of the bank and there was no instruction upon him to recover the bills. He illegally received the bills. An employee of the bank was assigned to receive the bills and make entries in the ledger. He could not seize any documents regarding the office order of K.K Sorma by which he was instructed to receive the bills from the bank. He did not send the signature of K.K Sorma to the expert. He did not ascertain the specimen signature of the K.K Sorma. He

admitted that the signatures of K.K Sorma are identical to his signature on the bills. He denied the suggestion that K.K. Sorma did not sign the bills and he was also not the authorized person. There were no Rules for using the security seal of the bank except the cashier. The bank authority did not issue any letter allowing K.K. Sorma to receive the bills sitting in the bank. By exhibit Nos. 2, 4, 6, 7, 10, 12, 14, 16, 18, 22 and 24 electric bills of different years were seized. At that time, he was on Deputation at Cox's Bazar. During cross-examination on behalf of the accused Solaiman, he denied the suggestion that at the time of occurrence, the accused Solaiman was posted at Moheshkhali or in 1984 he came to Cox's Bazar or he did not discharge his duty to receive the electric bills. On 25.04.84 the accused Solaiman joined with the bank. The accused Solaiman was assigned to receive the bills and he submitted the bills signed by the accused Solaiman. He denied the suggestion that the accused Solaiman was not assigned to receive the bills or he did not receive the bills or he was falsely implicated in the case.

P.W. 6 A/C-185 Md. Solaiman stated that on 30.01.89 he was posted at D.A.B, Cox's Bazar. On that day, Investigating Officer Shahidulla seized 2 electric bills of Tk. 14,610 and Tk. 29,989.12. The accused persons fraudulently put the seal without payment of the bills. The Investigating Officer prepared the seizure list. He proved the seizure list as exhibit 2 and his signature as exhibit 2/1. During cross-examination, he stated that the bills were not available in Court today.

P.W. 7 Sudhir Ranjan Das is the Senior Officer (retired) of Pubali Bank, Cox's Bazar Branch. At the time of the occurrence, he came to know that the accused Solaiman and Assistant Cashier Jahir used to receive the electric bills and at that time, K K Sorma and Guard Ali were present there. K K Sorma also received the bill putting signature. He could not say how K K Sorma discharged his duty in the bank. There was an order to enter the bill in the ledger. He admitted that the employees discharged duty in the accounts section used to receive the

bill. He affirmed that he is not aware whether K K Sorma was involved with the cashier. He denied the suggestion that he deposed falsely.

P.W. 8 Milon Kanti Datta is the Upper Division Assistant, Sales and Distribution Department, PDB, Chittagong. He stated that from 1985 to 1992 he discharged his duty as Lower Division Assistant, PDB, Cox's Bazar. The accused K. K. Sorma was the Upper Division Assistant of PDB. He heard that the accused K. K. Sorma had received the electric bills misappropriated without making an entry in the register and bank statement. He proved his signature on the seizure list as exhibit 34/2. During cross-examination on behalf of accused K K Sorma, he stated that he could not say whether accused K K Sorma received the bills. He heard that in 1984 K K Sorma was transferred to Satkania. He heard that K K Sorma misappropriated the electric bills.

P.W. 9 Mir Kashem stated that from 1981 to 1986 he discharged his duty as Assistant Commercial Officer, Distribution Department, PDB, Cox's Bazar. The departmental action was taken against the accused K K Sorma for misappropriation of the electric bills. During cross-examination, he stated that the accused K K Sorma discharged the duty of S.O.D. He could not say whether the accused K K Sorma misappropriated the electric bills.

P.W. 10 Md. Abdul Awal is the Sub-Assistant Director, Combined District Office, Patuakhali. He stated that from 2003-2007 he was posted as Assistant Inspector of the Bureau of Anti-Corruption. The Court directed me to submit the year-wise charge sheet. Accordingly, he submitted the 4 charge sheet for each year.

P.W. 11 Md. Sirajul Islam was the Junior Assistant Accountant of PDB, Cox's Bazar. He stated that the occurrence took place before he joined the office. On 21.07.88 the Inspector of the Bureau of Anti-Corruption seized 9 items of documents. He signed the seizure list. He proved his signature on the seizure list as exhibit 22/2. During cross-examination, he stated that the accused K K Sorma was the Upper

Division Assistant of PDB. He was not posted in the bank while he was posted at Cox's Bazar. The accused K K Sorma was transferred to Satkania. The electric bills were received by the employees of the bank.

No one appears on behalf of the accused K K Sorma.

Learned Advocate Mr. Mafizuddin appearing on behalf of the appellant Md. Solaiman submits that the P.W. 4 Md. Jahurul Haque Chowdhury stated that accused K K Sorma was assigned by the PDB. to receive the electric bills of PDB. from the bank and the accused Md. Solaiman was not assigned to receive the electric bills, and the customer khatian, ledger book and bank statement were not proved in the case and the prosecution failed to prove the charge against the accused beyond all reasonable doubt.

Learned Advocate Mr. Md. Omar Farook appearing on behalf of respondent No. 2, Anti-Corruption Commission in both the appeals, submits that the accused Md. Solaiman is the Cashier of Pubali Bank Limited, Cox's Bazar Branch and the accused Md. Solaiman and K K Sorma received the bills making entry in the customer khatian and without making entries of the recovered bills in the ledger and statement of bank misappropriated total Tk. 1,37,081 and the prosecution proved the charge against the accused beyond all reasonable doubt. He prayed for the dismissal of the appeal.

I have considered the submissions of the learned Advocate Mr. Mafizuddin who appeared on behalf of the appellant Md. Solaiman and the learned Advocate Mr. Md. Omar Farook who appeared on behalf of respondent No. 2, Anti-Corruption Commission, in both the appeals, perused the evidence, impugned judgment and order passed by the trial Court and the records.

On perusal of the evidence, it appears that the accused Md. Solaiman was the Cashier of Pubabli Bank Limited, Cox's Bazar Branch at the time of occurrence and the accused K K Sorma was the Upper Division Assistant of PDB, Cox's Bazar. The prosecution case is that the

accused Md. Solaiman and K K Sorma in connivance with each other received the electric bills from the customers giving entry in the khatian but they did not make any entry of the recovered bills in the ledger and statement of the bank and misappropriated the total Tk. 1,37,081. During trial, the prosecution proved the electric bills as exhibits 1ka, 5, 7, 9, 11, 13, 15, 17, 19, 21, 27, 29, 31, 33, 35, 37, 39 and 42. P.W. 1 proved the statement of the bank (1983-1986) as exhibit 43 and 9, and the ledger book as exhibit 44. P.W. 5 stated that the seized bills were not posted in the statement of the bank and ledger. The accused Md. Solaiman did not cross-examine P.W. 5 regarding the missing of the bill in the statement of bank and ledger (exhibits 43 and 44).

Admittedly, the accused Solaiman was the cashier at the relevant time and he was assigned to receive the bills of the PDB. Section 106 of the Evidence Act, 1872 states that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In the instant case, the prosecution proved that the accused Md. Solaiman as Cashier of Pubali Bank Limited, Cox's Bazar received the bills (exhibits 1ka, 5, 7, 9, 11, 13, 15, 17, 19, 21, 27, 29, 31, 33, 35, 37, 39 and 42) from the customer of the PDB but those bills were not posted in the ledger and statement of bank. No explanation is given by the accused Md. Solaiman as to why the said bills amounting to Tk. 1,37,081 received by those exhibits were not posted in the ledger and the statement of the bank.

P.W. 11 Md. Serajul Islam, Junior Assistant Accountant of PDB, Cox's Bazar stated that accused K K Sorma was the Upper Division Assistant of PDB and he was not posted in the bank. No documentary evidence was adduced by the prosecution to prove that the accused K K Sorma was posted in the Pubali Bank Limited, Cox's Bazar Branch to receive the electric bills on behalf of the PDB. P.W. 4 Md. Jahurul Haque Chowdhury was the Assistant Cashier, Pubali Bank Limited, Cox's Bazar Branch. He stated that at the time of payment of the electric

bills the accused K K Sorma was present in the bank and he used to receive the bills sitting at a counter of the bank and he used to sign the bills. The alleged signature of K K Sorma on the bills allegedly received by him was not sent for expert opinion. As an Assistant Cashier of Pubali Bank Limited, Cox's Bazar Branch, P.W. 4 is also responsible for receiving electric bills but he completely remained silent regarding the act of accused Md. Solaiman under whom he discharged his duty. Therefore, P.W. 4 appears to me as a biased witness. He attempted to save the accused Md. Solaiman who was the responsible officer for receiving the electric bills. In the absence of any expert opinion regarding the signature of the accused K K Sorma on the bills, it cannot be said that he received the bills on behalf of the PDB sitting in the counter of the bank.

It is found that the accused Md. Solaiman received total Tk. 1,26,812.45 (by exhibits 7, 11, 13, 15, 17, 19, 27 series and 42 (total 16 bills) and without posting the said amount in the ledger and the statement of bank misappropriated.

The accused Md. Solaiman is found guilty of the offence under Section 409 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947 and he is sentenced under Section 5(2) of the said Act to suffer rigorous imprisonment for 2(two) years and a fine of Tk. 1,26,812.45.

The accused Md. Solaiman is directed to surrender in the trial Court within 30(thirty) days from the date, and deposit the fine amount within the said period, failing which the trial Court shall take steps following the law.

The prosecution failed to prove the charge against the accused K K Sorma. He is acquitted from the charge. The impugned judgment and order of conviction and sentence passed by the trial Court against the accused K K Sorma is hereby set aside.

However, there will be no order as to costs.

In the result, Criminal Appeal No. 4446 of 2014 is allowed and Criminal Appeal No. 4513 of 2014 is dismissed.

Send down the lower Court's records at once.