

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 4512 of 2014

Md. Solaiman

... Appellant

-Versus-

The State and another

...Respondents

with

Criminal Appeal No. 4486 of 2014

K K Sorma

...Appellant

-Versus-

The State and another

...Respondents

No one appears.

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

Mr. Md. Akhtaruzzaman, D.A.G with

Mr. Sultan Mahmood Banna, A.A.G with

Mr. Mir Moniruzzaman, A.A.G with

Ms. Farhana Abedin, A.A.G with

Mr. Md. Kaium, A.A.G

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

Mr. Md. Omar Farook, Senior Advocate

...For the Respondent No. 2 (ACC)

(In both criminal appeals)

Heard on 25.05.2025, 28.05.2025, 24.06.2025
and 25.06.2025

Judgment delivered on 26.06.2025

The above-mentioned two appeals have arisen out of the impugned judgment and order passed by the trial Court and both the appeals were heard analogously and disposed of by this single judgment.

The above mentioned appeals under Section 10 of the Criminal Law Amendment Act, 1958 are directed challenging the legality and propriety of the impugned judgment and order dated 30.06.2014 passed by the Divisional Special Judge, Chattogram in Special Case No. 18 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 409/420/419 of the Penal

Code, 1860 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 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 further 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 months which will run concurrently and confiscating the misappropriated amount Tk. 79,891.85.

The prosecution's 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 customers and used to misappropriate realised bills amount without recording in the ledger and the statement of bank since 1983. The accused Md. Solaiman and the accused K K Sorma after receiving the bills from the customers used to put the seal “নগদ গ্রহণ” of the bank on the bills and return the bills to the customers. They did not record the bills in the ledger and the statement of the bank. The accused persons misappropriated total Tk. 3,57,426.08 from March 1983 to December 1986 in connivance with the co-accused Abdul Jabbar, Nurul Amin, Nurul Islam, and Mosharaf Hossain.

Md. Abdul Awal, Assistant Inspector of the Bureau of Anti-Corruption, Cox's Bazar took up the investigation of the case. During the investigation, the Investigating Officer 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, found the prima facie truth of the allegation of misappropriation of Tk. 1,19,066.80 against the

appellants and Nurul Amin, Abdul Jabbar, Mosharof Hossain, Nurul Kabir, Shahadat Hossain and Zainul Abedin under sections 409/ 420/ 467/ 468/ 218/ 119/ 477(Ka)/109 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947 and submitted final report in favour of the accused Nurul Islam.

After that, the case record was sent to the Senior Special Judge, Chattogram who took cognizance of the offence against the accused Md. Solaiman, Nurul Amin, K K Sorma, Abdul Jabbar, Mosharof Hossain, Nurul Kabir, Shahadat Hossain and 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 and discharged accused Nurul Islam. Subsequently, the co-accused Shahadat Hossain died. After that, the case was sent to the Divisional Special Judge, Chattogram for trial.

During trial, charge was framed 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 the accused Nurul Islam, Abdul Jabbar, Mosharaf Hossain, Zainul Abedin and Nurul Kabir were discharged. The charge so framed against the accused-persons were read over to them and they pleaded not guilty to the charge and claimed to be tried following the law.

The Divisional Special Judge, Chattogram, by order dated 19.02.2003, sent the case to the Bureau of Anti-Corruption for submitting year year-wise charge sheet. After that, Md. Abdul Awal, Assistant Inspector, Bureau of Anti-Corruption, submitted the charge sheet under Sections 409/420/467/468/218/119/477(Ka)/109 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947 against the accused-persons for the offenses committed from June 1984 to December 1984 for misappropriation of total Tk. 1,19,066.80.

The Divisional Special Judge, Cox's Bazar, again took cognizance of the offence against the 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 transferred the case to the Divisional Special Judge, Chattogram for trial. During trial, the Divisional Special Judge, Chattogram again framed the charge against the accused-persons 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 to them and they pleaded not guilty to the charge and claimed to be tried following law.

The prosecution examined 10(ten) witnesses to prove the charge against the accused-persons and they cross-examined P.Ws. 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. After concluding trial, the trial Court by impugned judgment and order convicted the accused Md. Solaiman and K K Sorma and sentenced them as stated above against which they filed the appeals.

P.W. 1 Abdur Rahim is the Security Guard, Pubali Bank, Cox's Bazar. He stated that from 1984 to 1988 he discharged his duty as a Security Guard of Pubali Bank Ltd, Cox's Bazar Branch. He used to receive the bills of PDB and hand over those bills to the cashier. The accused Krishno Kumar Sorma used to come to the bank but he is not aware of him what he did in the bank. He was declared hostile. During cross-examination on behalf of the prosecution, he stated that the Investigating Officer interrogated him. He denied the suggestion that he made statement to the Investigating Officer against the accused, but he deposed falsely at the instance of the accused-persons. During cross-examination on behalf of the accused Krishno Kumar Sorma, he stated that an officer of the bank was assigned to receive the electric bills of PDB. The accused Krishno Kumar Sorma is an Officer of the PDB. He did not see him to receive the electric bills at

the bank. During cross-examination, on behalf of the accused Solaiman, he stated that he did not hand over any electric bill to the cashier Solaiman.

P.W. 2 Md. Anayet Ali is the Meter Reader of PDB. 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 is discharging his duty as Assistant Customer Supervisor. He stated that after examination of the meter, the Meter Readers prepared the bills and handed them over the bills to the customers. He did not hand over any bill to the accused K.K. Sorma and Abdul Jabbar. He also did not hand over any bills to them to record in the ledger. During cross-examination, he stated that the accused K.K Sorma was the Upper Division Assistant of PDB. He is not aware of the fact that the accused K.K Sorma used to receive the bills in the bank. The accused Solaiman is not known to him.

P.W. 3 Bipul Kanti Saha is the Meter Inspector of PDB, Cox's Bazar. He stated that from 02.11.1985 to today, he has been discharging his duty as Meter Reader of PDB. Now he is discharging his duty as Inspector of Meter. As Meter Reader, after inspecting the meters, he used to prepare the bills and send those to the customers. He did not prepare the statement of bank. He also did not send the bills to the accused K.K Sorma. He is not aware of the signatures of the accused-persons. He sent the bills to the customers. He did not send the bills to the accused-persons. During cross-examination, he stated that he is not aware of the fact 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. He affirmed that the accused Solaiman was not known to him.

P.W. 4 Syed Md. Shahidullah was an Officer of the Bureau of Anti-Corruption, Rangamati. He stated that on 20.07.1988, he discharged his duty as Inspector of D.A.B, Cox's Bazar. He stated that during the enquiry of the E.R. No. 55/88 of D.A.B., it was found

that the accused Md. Solaiman, Cashier of the Pubali Bank Ltd, Cox's Bazar Branch, in connivance with Upper Division Assistant Krishno Kumar Sorma of PDB, having received the electric bills from the bank since March 1983 did not record those bills in the bank statement and the account, and misappropriated. The customers paid the electric bills in the cash counter and bill cashier Md. Solaiman and K.K Sorma, an employee of PDB, used to receive the bills. The accused K.K. Sorma used to put the seal and sign the bills, and without posting in the statement of the bank used to misappropriate. On the other hand, the employees of PDB, Abdul Jabbar, Nurul Amin, and Mosharof Hossain used to receive the bills without recording in the customer Khatian and bank statement and misappropriated total electric bills of Tk. 3,57,726.08 for which he submitted the charge sheet against the accused Solaiman, Krishna Kumar Sorma, Abdul Jabbar, Nurul Amin, Nurul Islam and Mosharof Hossain under Sections 420/409/218/109 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947. Subsequently, he was again assigned for further investigation of the case and seized documents in connection with the E.R No. 55/88. He proved the E.R. No. 55/88 as Exhibit 3. On 11.07.88, he seized the electric bill No. 199976 dated 15.01.85 of the customer Rana from Arifur Rahman. He proved the seizure list as exhibit 4 and his signature on the seizure list as exhibit 4/1. On 30.01.89, he seized 02 electric bills (exhibit 5) and prepared the seizure list. He proved the seizure list as exhibit 2 and his signature on the seizure list as exhibit 2/2. He proved the bills regarding exhibit 2 as exhibit 2(Ka). On 16.07.88, he seized bill No. 48840 dated 31.1.86, 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 of the seizure list as exhibits 7 series. On 15.06.88, he seized bill No. 33587 dated 09.01.86, bill No. 284415 dated 09.01.86, and electric bill No. 485977 dated 09.01.86. On the

same date, he also seized another bill and prepared the seizure list (Exhibit 8). He proved his signature on the seizure list as Exhibit 8/1. He proved the seized bills as exhibits 9 series. On 07.07.88, he seized bill No. 343541 dated 23.07.85 and bill No. 196039 dated 10.01.86 and prepared the seizure list. He proved the seizure list as exhibit 10 and his signature on the seizure list as exhibit 10/1. He proved the 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 on the seizure list as exhibit 12/1. He proved the 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 2 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 on the seizure list as exhibit 16/1. He proved the alamat 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 exhibits 19 series. On 07.07.88, he seized one bill. He proved the seizure list as exhibit 20 and his signature on the seizure list as exhibit 20/1. He proved the alamat as exhibit 21. On 21.07.88, he seized 9 register of customer khatian from the Office of the Executive Engineer, PDB and took the custody. 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 accounts form C.D 3 and 4 from the Manager, Pubali Bank Ltd and a letter dated 04.07.83 of the PDB, Dhaka. He proved the seizure list as exhibit 24 and his signature on the seizure list as exhibit 24/1. He proved the letter as exhibit 25 series. He proved the seizure list dated 20.02.89 as exhibit 26 and his signature on the seizure list as exhibit 26/1. He proved 2 electric 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 exhibit 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 on the seizure list as exhibit 30/1. He proved the alamat as exhibit 31 series. He proved the seizure list dated 09.03.89 as exhibit 32, and his signature as exhibit 32/1, and the alamat as exhibit 33 series. He proved another seizure list on the same date as exhibit 34 and his signature on the seizure list as exhibit 34/1. He proved those alamat as exhibit 35 series. On 11.09.89, he seized total 100 vouchers from Pubali Bank, Cox's Bazar. He proved the seizure list as exhibit 36 and his signature on the seizure list as exhibit 36/1. He proved the alamat as exhibit 37 series. He proved the seizure list dated 12.03.89 as exhibit 38 and his signature on the seizure list as exhibit 38/1. He proved 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 on the seizure list as exhibit 40/1. He proved the bank account regarding the bills from 1980 to 1986. The recovered alamat were not recorded in the statement of bank. The bank statements were kept in the custody of PDB. He handed over the statements to the custody of the PDB. On 11.03.89, he seized a electric bill. He proved the seizure list as exhibit 41 and his signature on the seizure list as exhibit 41/1. He proved the electric bill as exhibit 42. He recorded the statement of witnesses. He found that the accused Nurul Kabir, Cash Officer, Pubali Bank Ltd, Cox's Bazar Branch, Md. Solaiman, Cashier, Pubali Bank Ltd, Cox's Bazar Branch, K.K Sorma, Upper Division Assistant, PDB, Cox's Bazar, Md. Shahadat Hossain, Former Manager, Pubali Bank Branch, Zainul Abedin, Former Manager, Cox's Bazar Branch, Abdul Jabbar, Lower Division Assistant, PDB, Cox's Bazar, Nurul Amin, Meter Reader, PDB, Cox's Bazar, Md. Mosharraf, Junior Account Assistant, PDB, Cox's Bazar used to issue the bills and K.K Sorma, a representative of the PDB, used to receive the bills sitting in the counter of the bank, but he did not record recovered bills in the ledger and in the customer khatian. The recovered electric bills amount were not deposited in the

public exchequer from 1983 to 1986. He submitted the memo of evidence against the said accused persons, and thereafter, he was transferred. After that, Abul Kalam Azad, having received the approval, submitted the charge sheet. During cross-examination, he stated that K.K Sorma is not an employee of the bank and he was not assigned to receive the bills. He discharged his duty illegally. There was a ledger for posting the bills of PDB and the employees of the bank were assigned. He affirmed that he made the investigation regarding the electric bills from March/83 to December/86. At the relevant time, Ajit Kumar Datto was the Deputy Director of PDB. No order has been issued by him regarding the discharging duty of K.K Sorma in the bank. No document was seized regarding the duty of K.K Sorma. He did not collect the specimen signature of K.K Sorma to send to the expert. He affirmed that the signature of K.K Sorma is appearing on the bills. He denied the suggestion that different people signed the bills in the name of K.K Sorma. Although, he did not admit his signature on the bills but he committed the offence. He denied the suggestion that K.K Sorma did not sign the bills and he was not authorized to sign. He denied the suggestion that since K.K Sorma did not sign the bills, his signatures were not sent to the expert. There was no office order regarding the use of the seal of the bank by K.K Sorma. But he did it. He denied the suggestion that after transferred in 1984, the accused K.K Sorma was not posted at Cox's Bazar. He denied the suggestion that accused K.K Sorma was not involved in the occurrence. No written order was issued by the bank regarding the duty of K.K Sorma. He denied the suggestion that in 1985-86, K.K Sorma was not posted at Cox's Bazar. Exhibits 2, 4, 7, 10, 12, 14, 16, 18, 22, and 24 relate to the electric bills of different years. He denied the suggestion that at the relevant time of occurrence, the accused Solaiman was posted at Moheshkhali and in April 1984, he came to Cox's Bazar. He denied the suggestion that the accused Solaiman did not discharge any duty regarding the electric bills. The accused

Solaiman joined on 25.04.84. The accused Solaiman was assigned to receive the bills. He submitted the bills signed by the accused Solaiman. He denied the suggestion that the accused Solaiman was not assigned to receive the bills and he only adjusted the bill. He denied the suggestion that the accused Solaiman did not receive the bill of PDB and he was falsely implicated in the case. He stated that he seized the statement of the bank and the ledger of the PDB. He proved the statement (1983-86) as exhibit 43 series. In the statement, the recovered bills were not posted. In the customer khatian, the bank statements were not recorded.

P.W. 5 Md. Solaiman stated that he is now discharging his duty in the Office of the ACC, Chattogram. On 31.01.89, he was posted at D.A.B, Cox's Bazar. On that day, Investigating Officer Shahidullah seized 2 electric bills of Tk. 14,610 and another bill of Tk. 29,989.12. The amounts of the said bills were misappropriated. The Investigating Officer Shahidullah seized those bills and prepared the seizure list. During cross-examination on behalf of Krishna Kumar, he stated that he is not aware whether those bills were received by any of the bank. The bills were not produced in Court.

P.W. 6 Sudhir Ranjan Das is the Senior Officer (retired) of Pubali Bank, Cox's Bazar Branch. He stated that at the time of the occurrence, he discharged his duty as an Officer of the Pubali Bank, Cox's Bazar. At the relevant time, he came to know that the cashier accused Solaiman and Assistant Cashier Jahir used to receive the electric bills. The accused K.K Sorma used to receive bill amount and signed the bills. At that time, the Guard Ali Akbar was also present there. He admitted that the employees of the cash section used to receive the electric bills. In general, after receiving the electric bills, those were posted in the ledger. He could not say on which date the accused persons received the electric bills.

P.W. 7 Milon Kanti Datta is the Upper Division Assistant, Sales and Distribution Department, PDB, Chattogram. 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 use to receive the electric bills and without posting in the bank statement and register misappropriated. The Inspector of the D.A.B prepared the seizure and took his signature. He proved his signature on the seizure list as Exhibit 34/2. During cross-examination on behalf of the accused K K Sorma, he stated that he is not aware of the fact that the accused K K Sorma used to receive the electric bills. He heard that in 1984 K K Sorma was transferred to Satkania. He heard that K K Sorma had received the misappropriated bills.

P.W. 8 Mir Kashem was the Commercial Officer of PDB, Cox's Bazar, from 1981 to 1986. The accused K K Sorma is an employee of the said office. The accused K K Sorma was punished due to misappropriation of the electric bills. He admitted that the accused K K Sorma is an employee of the PDB and he discharged his duty regarding S.O.D. He is not aware of the fact that the accused K K Sorma misappropriated the electric bills.

P.W. 9 Md. Abdul Awal is the Sub-Assistant Director, ACC, Combined District Office, Patuakhali. He stated that from 2003-2007, he discharged his duty as Assistant Inspector of the Bureau of Anti-Corruption, Cox's Bazar and order was passed for submitting the year wise charge sheet. Accordingly, he submitted the year wise 4 charge sheets. During cross-examination, he admitted that by order of the Court, he submitted 4 year-wise charge sheets. He did not make any investigation. On perusal of the records, he submitted year-wise charge sheets.

P.W. 10 Md. Sirajul Islam is an Accountant, PDB, Cox's Bazar. He stated that at the time of occurrence, he was Junior Account Assistant of the PDB, Cox's Bazar. Before his joining, the occurrence took place on 21.07.1984. The then Inspector of ACC 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 an employee of the PDB. He was not an employee of the bank. While he joined in the Office of the Cox's Bazar, the accused K K Sorma was transferred to Satkania. The employees of the bank received electric bills. He was instructed to sign the seizure list.

No one appears on behalf of the appellants.

Learned Senior Advocate Mr. Md. Omar Farook appearing on behalf of the respondent No. 2 (ACC) in both the appeals, submits that the accused Md. Solaiman was the Cashier of the bank and was assigned to receive the electric bills of the PDB. The accused Md. Solaiman in connivance with the accused K K Sorma having received the electric bills from the customers without posting in the customer khatian and the ledger and the statement of bank (exhibits 43 and 44) misappropriated total electric bills of Tk. 50,963.90 and the prosecution proved those bills as exhibits 5, 17, 21 and 29. During trial, the prosecution proved the charge against the accused-persons and the trial Court on correct assessment and evaluation of the evidence of the prosecution witnesses legally passed the impugned judgment and order. He prayed for the dismissal of the appeal.

I have considered the submissions of the learned Senior Advocate Mr. Md. Omar Farook who appeared on behalf of the respondent No. 2 (ACC) 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 reveals that the accused Md. Solaiman was the Cashier of Pubabli Bank Limited, Cox's Bazar Branch at the relevant time and he was assigned to receive the bills of PDB. Admittedly, the accused K K Sorma was the Upper Division Assistant of PDB, Cox's Bazar. P.W. 4 admitted that no office order was issued by the PDB regarding the duty of K K Sorma in the bank.

He also admitted that the alleged signature of K K Sorma on the recovered bills was not sent to the handwriting expert to ascertain whether the accused K K Sorma had signed the bills and received money from the customers of the PDB. In the absence of any office order and the report of the handwriting expert regarding the alleged signature of K K Sorma on the electric bills, it cannot be said that the accused K K Sorma received the electric bills of PDB sitting in the counter of the Pubabli Bank Limited, Cox's Bazar Branch.

It is found that the accused Md. Solaiman received total electric bills of Tk. 50,963.90 by exhibits 5, 17, 21, and 29 series and without recording those bills in the ledger and the statement of bank (exhibits 43 and 44) misappropriated. Therefore, I am of the view that the prosecution proved that the accused Md. Solaiman misappropriated total electric bills of Tk. 50,963.90.

In the result, the Criminal Appeal No. 4512 of 2014 is allowed in part, and the Criminal Appeal No. 4486 of 2014 is allowed.

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 6(six) months and fine of Tk. 50,963.90.

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

However, there will be no order as to costs.

Send down the lower Court's records at once.