IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CRIMINAL APPELLATE JURISDICTION)

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 9257 of 2019 with
Criminal Appeal No. 9492 of 2019 with
Criminal Appeal No. 3650 of 2020 with
Criminal Appeal No. 5685 of 2020 with
Criminal Appeal No. 13499 of 2019 with
Criminal Appeal No. 10786 of 2019 with
Criminal Appeal No. 14858 of 2019

Babul @ Bablu
…..Appellant in Cril. Appl. No. 9257 of 2019
Md. Kamruzzaman
.. Appellant in Cril. Appl. No. 9492 of 2019
Md. Zakir Hossain
…Appellant in Cril. Appl. No. 3650 of 2020
Rustom Ali Matubbor
…Appellant in Cril. Appl. No. 5685 of 2020
Nurul Haque Khokon
..Appellant in Cril. Appl. No. 13499 of 2019
Mostafa Kamal Lasker
..Appellant in Cril. Appl. No. 10786 of 2019
Abdul Matin Mollah
..Appellant in Cril. Appl. No. 14858 of 2019

-Versus-

The state and another
…… respondents

Mr. Md. Mamun Kabir, Advocate
..For the appellant in Cril. Appl. No. 9257 of 2019
Mr. M.M.A. Siddique, Advocate
..For the appellant in Cril. Appl. No. 9492 of 2019
Mr. Md. Safayeat Hossain Sajeeb, Advocate
..For the appellant in Cril. Appl. No. 3650 of 2020
Ms. Tahrima Salma Lina, Advocate
..For the appellant in Cril. Appl. No. 5685 of 2020
Mr. Golam Mostafa Lasker, Advocate
..For the appellant in Cril. Appl. No. 13499 of 2019
Mr. Golam Mostafa Lasker, Advocate
..For the appellant in Cril. Appl. No. 10786 of 2019
Mr. Abu Sayeed Sagar, Advocate
.For the appellant in Cril. Appl. No. 14858 of 2019

Mr. A.K.M. Fazlul Haque, Advocate
…For the respondent No. 2 in all the appeals.

Mr. S.M. Golam Mostofa Tara, DAG with
Mr. A. Monnan, AAG
…….for the State in all the appeals.

Heard on: 28.8.2023, 30.10.2023, 06.11.2023, 07.11.2023, 08.11.2023, 09.11.2023, 13.11.2023. 14.11.2023, 16.11.2023, 21.11.2023

Judgment on: 27.11.2023

The above-mentioned criminal appeals have arisen out of the impugned judgment and order passed by the trial court. Therefore all the appeals were heard analogously and disposed of by this single judgment.

The Divisional Special Judge, Dhaka by impugned judgment and order dated 6.8.2019 passed in Special Case No. 29 of 2003 arising out of Kutwali Police Station Case No. 39(3)1998, G.R. No. 944(BAC)1998 convicting the appellants under section 420 of the Penal Code, 1860 and sentencing the appellant Nos. 1. Rustom Ali Matubbar 2. Md. Zakir Hossain 3. Nurul Haque Khokan 4. Mostafa Kamal Lashkar and 5. Abdul Matin Mollah to suffer rigorous imprisonment for 5 years and to pay a fine of Tk. 50,00,000(fifty lakh) each, in default, to suffer rigorous imprisonment for one year and sentencing the appellant 1. Md. Kamruzzaman and 2. Babul @ Bablu to suffer rigorous imprisonment for 3(three) years and to pay a fine of Tk.25,00,000 (twenty-five lakh) each, in default, to suffer imprisonment for 06 months.

The prosecution case, in short, is that Md. Amanullah, DGM, Sonali Bank Limited, Dhaka South Zone, lodged FIR on 16.03.1998 at 12.05 pm alleging, inter alia, that on 16.03.1998 at 12.30 Abdul Hamid Khan, Manager, Rupali Bank Ltd. Sadarghat Branch informed the Zonal Head Office of the said bank that the

account holder Md. Delwar of the said branch informed that there was only a deposit of Tk. 68,000 in place of the total deposit amounting to Tk. 5,14,000 in his Account No. 771 maintained with Rupali Bank Ltd, Sadarghat Branch. Thereafter, the informant along with the AGM Moynul Haque, Senior Principal Officer Nurul Haque and the Principal Officer Yusuf Aziz Muttaki of Rupali Bank Ltd, Zonal Office, South Zone-5 were instructed to enquire physically about the said allegation. During the inquiry, the above-named officers found irregularity in the said account and also other accounts. The said committee found that the deposits made by the account holders were not credited in their accounts and showing false deposits, the money had been withdrawn and in some accounts, the money was misappropriated showing false debit. During the preliminary inquiry, the inquiry committee found that Tk. 25,00,000 was misappropriated. After receiving the information about the said misappropriation, the informant came to the said branch. He believed that the accused 1. Principal Officer Arshed Ali Miah 2. UDA-Cum-Cashier Rustom Ali Matubbar 3. Senior Officer Abdul Matin Mollah 4. Godown Chowkidar Md. Zakir Hossain 5. Godown Keeper Md. Kamruzzaman and 6. Senior Officer Md. Abdul Rashid are involved in the misappropriation of the money of the account holders. The informant alleged that he found negligence of the duty of the Manager Abdul Matin Khan.

Police took up the investigation of the case and during the investigation on 31.3.1998, the informant applied to the Deputy Commissioner (CID), Dhaka alleging that 1. Officer Md. Md. Ashraf Uddin Khan and 2. Senior Principal Officer Nurul Amin Chowdhury and 3. Principal Officer Mojibur Rahman were involved in the misappropriation of the money of the account holders. During the preliminary inquiry, it is found that Officer Md. Ashraf Uddin Khan misappropriated Tk. 6,55,000, Manager Nurul Amin

Chowdhury misappropriated Tk. 10,00,000 and Principal Officer Mujibur Rahman misappropriated Tk. 11,05,000 in connivance with the principal accused Arshad Ali Miah and by joint signature illegally transferred the money from the account of the account holders to the account of one Rafikul Islam.

During the investigation, accused Arshed Ali Miah was arrested by police and made a statement under section 164 of the Code of Criminal Procedure, 1898 before the Metropolitan Magistrate, Dhaka and the Investigating Officer recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898, seized the documents and prepared the sketch map and index. After completing the investigation, he found prima facie truth of the allegation made in the FIR and submitted charge sheet No. 202 on 30.3.2001 under sections 420/406/409/109 of the Panel Code, 1860 against the FIR named accused 1. Md. Arshad Ali Miah 2. Md. Abdul Matin Mollah 3. Rustom Ali Matubbor 4. Md. Zakir Hossain 5. Md. Kamruzzaman 6. Babul @ Bablu, 7. Mostafa Kamal Lashkar and 8. Nurul Haque Khokon. During the investigation, FIR named accused Senior Officer Md. Abdul Rashid died and he was not sent up in the charge sheet.

On 23.8.2001 the case record was sent to the Metropolitan Senior Special Judge, Dhaka who by order dated 26.5.2003 took cognizance of the offense against the accused persons and by order dated 26.5.2003, the case was sent to the Divisional Special Judge, Dhaka for trial. On 13.08.2003, the learned Public Prosecutor filed an application for further investigation of the case and the Special Judge, Dhaka by order dated 13.8.2003 was pleased to send the case for further investigation to be made by the Bureau of Anti-Corruption holding that a series of cheques etc have been seized as regards defalcation of the money but the date of cheques and the period of occurrence were not ascertained. Thus, it is crystal clear

that the investigating officer did not investigate the case as per law. After that, P.W. 7 Md. Samsul Alam, Deputy Director of the Bureau of Anti-Corruption) Anti-Corruption Commission took up further investigation of the case. During further investigation, he seized the documents and thereafter he was transferred and handed over the records to P.W. 6 Inspector Md. Rafiqul Islam. During the investigation, the Bureau of Anti-Corruption was abolished and the Anti-Corruption Commission was constituted for which he adjourned the investigation. Subsequently, the Anti-Corruption Commission appointed P.W. 9 Deputy Director Selina Akhter of ACC as Investigating Officer. After completing the investigation, she submitted charge sheet No. 168 on 23.3.2009 under sections 409/420 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947 against the accused 1. Arshed Ali Miah 2. Rustom Ali Matubbar 3. Abdul Motin Mollah 4. Zakir Hossain, 5. Kamruzzaman 6. Mostafa Kamal Lashkar 7. Abdur Rashid 8. Babul @ Bablu and 9. Md. Nurul Haque Khokon under sections 420/409 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947. During further investigation, the accused Abdul Rahman died. She also submitted 7(seven) separate charge streets Nos. 168Ka-168Chha against the appellants and others for the offense allegedly committed each year.

Charge sheet No. 168 (Ka) was submitted for the offence allegedly committed in 1992 against accused Arshed Ali Miah, accused Babul @ Bablu and Nurul Haque Khokon, Charge sheet No. 168 (Kha) was submitted for misappropriation of Tk. 2,50,000 in 1993 against said three accused persons, Charge sheet No. 168 (Ga) for misappropriation of Tk. 100,000 was submitted against said three accused persons for the year 1994, charge sheet No. 168(Gha) was submitted against said three accused persons for misappropriation of Tk. 2,22,590 in 1995, charge sheet No. 168

(Umo) was submitted against the said three accused persons for misappropriation of Tk. 10,50,000 in 1996, charge sheet No. 168 (Cha) was submitted for misappropriation of Tk. 81,99,500 against said three accused persons and accused Rustom Ali Matubbar. charge sheet No. 168 (Chha) was submitted against the appellants, accused Arshad Ali Miah and accused Abdul Rashid for misappropriation of Tk. 1,68,79,800 for the year 1998.

On the application of the learned Public Prosecutor, the trial court by order dated 11.11.2010 split up the case following the said 7 charge sheets and charge sheet No. 168 (Ka) was registered as Special Case No. 29 (Ka) of 2003, charge sheet No. 168 (Kha) was registered as Special Case No. 29 (Kha) of 2003, charge sheet No. 168 (Ga) was registered as Special Case No. 29 (Ga) of 2003. Charge sheet No. 168 (Gha) was registered as Special Case No. 29 (Gha) of 2003, charge sheet No. 168 (Umo) was registered as Special Case No. 29 (Umo) of 2003, charge sheet No. 168 (Cha) was registered as Special Case No. 29 (Cha) of 2003 and charge sheet No. 168 (Chha) was registered as Special Case No. 29 (Chha) of 2003.

During the trial, charge was framed on 03.06.2014 in all the said cases against the respective accused persons under sections 409/420/109 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947. The charges framed against the accused persons were read over and explained to them and they pleaded not guilty to the charge and claimed to be tried following the law. During the trial, in all 7 (seven) special cases, the prosecution examined 8(eight) witnesses separately. Serial No. of P.Ws. 1 to 8 are same in all the cases. They made similar statements concerning the charge framed in all other cases. Therefore, to avoid repetition, I refrained from quoting the evidence of P.Ws. 1 to 8 examined in Special Case Nos. 29Ka of 2003 to 29Chha of 2003.

Thereafter, following the decision made in the case of State vs. Md. Ibrahim Ali reported in 66 DLR (AD) 33 and section 6(1)(B) of the Criminal Law Amendment Act, 1958 the trial court by order dated 14.4.2017 merged other cases along with the Special Case No. 29 of 2013. After that, the prosecution examined P.Ws. 9 to 12 in Special Case No. 29 of 2003. After examination of the prosecution witnesses, the accused persons were examined under section 342 of the Code of Criminal Procedure, 1898. The accused Abdul Motin Mollah examined Senior Principal Officer A.K.M. Mahbub Hossain, Rupali Bank Ltd as D.W.1 who was tendered as P.W. 10. After concluding the trial, the trial court by impugned judgment and order convicted the accused persons and sentenced them as stated above against which the accused persons filed the above-mentioned appeals.

Evidence adduced in Special Case No. 29 of 2003.

PW 1 Md. Amanullah stated that in 1998 he was discharging his duty as DGM, Rupali Bank Ltd, Dhaka South Zone. On 16.03.1998, the Manager of Rupali Bank, Sadarghat Branch informed him over the telephone about the misappropriation of the money of the account holders of the said branch. The Manager informed that the required balance of the account holder Md. Delwar Hossain in Account No. 771 was Tk. 5,14,000 but the balance of the said account was Tk. 68,000. Based on the said information, a committee was formed headed by AGM Moinul Haque for inquiry and Senior Principal Officer Nurul Haque and Principal Officer Yousuf Ali were the members of the said committee. After inquiry, the said committee reported that in the said account and other accounts of the bank, the deposited money was not credited in their accounts, and in some cases, the inquiry committee found that by showing false deposits and without crediting the deposits in the account of the depositors, the Principal Officer Arshad Ali Miah,

UDA-Cum-Cashier Md. Rustom Ali Matubbor, Senior Officer Md. Abdul Latif Mollah, Godown Chowkidar Md. Zakir Hossain, Godown Keeper Md. Kamruzzaman, Senior Officer Md. Abdur Rashid misappropriated the money of the account holders. Thereafter, he lodged the FIR. He proved the FIR as exhibit-1 and his signature as exhibit-1/1. In the meantime, the informant found that other officers were also responsible for the misappropriation of money of the account holders for which he filed an application on 31.3.1992 to the Detective Branch. He proved the said application as exhibit-1/Ka and his signature as exhibit-1/Ka/1. During cross-examination, he stated that he did not write the FIR but he read the FIR. The accused Nurul Haque Khokon was a customer of the bank but he was not involved in the transaction of the bank and at the time of deposit of Tk. 5,14,000 by Delowar, accused Nurul Haque Khokon was not present there. He affirmed that accused Nurul Haque Khokon deposited 02 (two) cheques in his account for withdrawal of the money which were seized. Nurul Haque Khokon did not deposit the cheque of any other person. During cross-examination on behalf of the accused Babul @ Bablu, he stated that he was a customer of the bank but he could not remember his account number. The original name of the accused Babul is Md. Rafiqul Islam. His name is not mentioned in the FIR. He denied the suggestion that accused Nurul Haque Khokon and Babul@ Bablu were not involved with the alleged occurrence. He affirmed that the accused Babul is the brother of the wife of accused Arshad Ali Miah.

P.W. 2 Ataur Rahman is the DGM, Rupali Bank Limited, Head Office, Dhaka. He stated that in 1998, he was discharging his duty as AGM of the special squad under the Managing Director. At that time, the occurrence regarding misappropriation of Rupali Bank, Sadarghat Branch was detected. A Buildup-cum-Finalization

of Demand Committee was formed by the Bank headed by DGM Nazrul Islam and he was the member. The Senior Principal Officer A.K.M. Mahabub Hussain was also a member of the committee. The said committee examined the records, vouchers, books of accounts and other documents of the account holders. The said committee found that Tk. 1,61,00,000 of 58 account holders of the said branch were misappropriated and accordingly, the committee submitted a report. The accused Arshed Ali Miah, Md. Rustom Ali Matubbar, Ashraf Uddin Khan, Abdul Matin Mollah, and Abdur Rashid were involved in the said misappropriation. P.W. 2 proved the inquiry report as exhibit-2 and his signature as exhibit-2/1. The defence declined to cross-examine P.W. 2.

P.W.3 M. A. Quddus Mia stated that in 1998 while he was discharging his duty as Assistant General Manager, Rupali Bank Limited, Head Office, Dhaka, a forgery was detected in Rupali Bank Ltd, Sadarghat Branch, Dhaka. After internal inquiry, a report was submitted to his section (General Banking Division). Thereafter, a 9(nine) members committee was formed headed by him. On 19.3.1998 the enquiry committee visited the said branch. After publication of the news in the daily newspapers, the account holders of the said branch assembled at the branch. At that time, officers and employees of the said branch fled away. During the inquiry, it is found that by pocket-banking and forgery Second Officer Arshad Ali Miah, former Manager Nurul Amin Chowdhury and Mujibur Rahman, Officers Abdul Matin Mollah and Abdur Rashid, Cashiers Md. Rustom Ali Matubbar, Ashraf Uddin Khan and Md. Sadullah Godown keepers, Md. Kamruzzaman, Mostafa Kamal and Md. Zakir Hossain and Md. Rafiqul Islam, the proprietor of Ms Rafiq Cloth Store and Babul, proprietor of Ms Bismillah Traders, misappropriated total Tk. 16102215 of 63 account holders. On 16.07.1998, the committee submitted a report (20 pages) along with

annexures (total 16 pages) to the Deputy General Manager, General Banking Division. He proved the said report as exhibit 3. He stated that he signed on each page of the report and annexures. He proved his signature as exhibit-3/1. During cross-examination on behalf of the accused Babul, he affirmed that there is no document to show that the accused Babul is the proprietor of Ms. Bismillah Traders, he said that he saw those documents in the branch. He denied the suggestion that the accused Babul has no relation with Ms. Bismilla Traders. The accused Nurul Haque Khokon declined to cross-examine P.W. 3.

P.W. 4 Md. Moshiul Azam stated that in 1998 while he was discharging his duty as Principal Officer, he visited the Rupali Bank Ltd, Sadarghat Branch on 22.02.1998 along with Officer Khurshed Alam and found some irregularities in the banking transaction of the said branch and informed the matter both orally and written to the higher authority. During cross-examination, he stated that Second Officer Arshad Ali was responsible for the misappropriation.

P.W. 5 Md. Khurshed Alam, former Senior Officer, Rupali Bank Ltd, Head Office was tendered by the prosecution and declined by the defense.

P.W.6 Md. Rafiqul Islam is the Assistant Director (PRL), Anti-Corruption Commission, Head Office, Dhaka. He stated that on 5.12.2004 while he was discharging his duty at the Bureau of Anti-Corruption, he received the records from the Samsul Alam for investigation. Since the Anti-Corruption Commission was reconstituted, he adjourned the investigation. After the reconstitution of the Anti-Corruption Commission, he handed over the records of the case on 23.06.2008 to P.W. 9 Assistant Director, Selina Akhter. Defence declined to cross-examine P.W.6.

P.W. 7 Md. Samsul Alam is the Deputy Director, Anti-Corruption Commission, Head Office, Dhaka. He stated that on 9.10.2003 when he was discharging his duty as Inspector of Anti-Corruption Commission he was appointed as investigating officer to make the further investigation. During the investigation, on 11.7.2004 he seized the documents from the Manager Abdul Khaleque of the Rupali Bank Ltd, Sadarghat Branch and prepared the seizure list. He proved the seizure list as exhibit-4 and his signature as exhibit-4/1. He proved the Zimmanama (bond) as exhibit-5 and his signature as exhibit-5/1. During further investigation, he was transferred and on 05.12.2004 he handed over the records to the P.W.6 Md. Rafiqul Islam. During cross-examination, he affirmed that the seized alamats were not produced before the Court.

P.W. 8 Saleh Ahmed is the former Assistant General Manager, Rupali Bank Limited, Dhaka South Zone. He stated that at the time of occurrence, he was posted at the General Banking Division, Head Office as Principal Officer. At that time, he came to know that a forgery was committed in the Rupali Bank Limited, Sadarghat Branch. Thereafter, the General Banking Division formed a seven-member committee and he was a member of the said committee. During the inquiry, the members of the said committee visited the said branch. The sixty-three account holders by filling applications stated that there was a discrepancy in their account. The Second Officer Arshad Ali, former Manager Nurul Alam Chowdhury, Mujibur Rahman, Officer Abdul Matin Mollah, Abdur Rashid, Cashier Rustom Ali Matubbar, Ashraf Uddin Khan, Md. Sad Ullah, Godown Keepers Md. Kamruzzaman and Mostafa Kamal and Godown Chowkidar Md. Zakir Hossain misappropriated total Tk. 1,82,18,520 of 60 customers of said sixty-three account holders. He proved his signature on the report (exhibit-3) as exhibit-3/3.

During cross-examination, he stated that subsequently the members of the committee were increased and out of 10 members of the said committee, nine members signed the report. Moshiur Alam did not sign the report. Subsequently, he was not a member of the committee. He denied the suggestion that Moshiur Alam made a dissent for which he did not sign the report. He affirmed that the godown keeper shall look after the godown. The accused Md. Kamruzzaman used to adjust the balance of the ledger and taking that advantage, he used to temper the balance sheets. There is no document to show that the accused Md. Kamruzzamn used to assist in adjusting the balance sheet. He affirmed that Kamruzzaman and Mostafa Kamal Lashkar were master roll employees. He denied the suggestion that Mostafa Kamal Lashkar was not involved in any activities of the branch. He was also involved in the misappropriation. Abdul Matin Mollah was a Junior Officer. He used to do his job as assigned by the Manager and he used to discharge his duties regarding the posting in the ledger, balancing, etc. He affirmed that the cashier used to receive and distribute the money. He could not say who misappropriated a particular amount.

P.W. 9 Selina Akhtar is the Deputy Director, Anti-Corruption Commission, Head Office, Dhaka. She stated that while she was discharging her duty with the Anti-Corruption Commission, Combined District Office, Dhaka-1 as Assistant Director on 9.3.2008 she was appointed as Investigating Officer in place of Investigating Officer Rafiqul Islam. On 23.06.2008, she received the case docket. During investigation, she perused the seized documents and the information. She submitted the memo of evidence to submit charge sheet against the accused Arshed Ali Miah, Md. Rustom Ali Matubbar, Abdul Matin Mollah, Md. Zakir Hossain, Md. Kamruzzaman, Mostafa Kamal Lashker, Abdur Rashid, Babul @ Bablu and Md. Nurul Haque Khokon. The Anti-Corruption

Commission vide memo dated 24.11.2008 (exhibit-6) had approved and accordingly, she submitted charge sheet No. 168 on 23.03.2009. Subsequently, following the order of the Court, she submitted charge sheet Nos. 168/Ka to 168 Chha for misappropriation of each year. During cross-examination, she stated that in Charge Sheets No. 168Ka, 168Kha, 168Ga and 168Gha it was found that accused Arshad Ali Miah is solely responsible for the offence and the involvement of other accused persons was also mentioned in those charge sheets, but their involvement was not proved. In charge sheet No. 168Umo accused Abdul Matin Mollah jointly signed and the involvement of others was not proved. He was the officer of the loan section. She could not say whether Arshad Ali Miah signed the vouchers after receiving money and following Arshad Ali Miah, other officers bonafide signed the vouchers. She denied the suggestion that Abdul Matin Mollah was not involved in the occurrence. She affirmed that in charge sheet No. 168 Umo the involvement of other accused persons was not found. She found the involvement of Arshad Ali Miah and Rustom Ali Matubbor in charge sheet No. 168 Cha. She found the involvement of the accused Arshad Ali Miah, Abdur Rashid and Rustom Ali Matubbor in CS No. 168 Chha. In all the misappropriation, the account of the accused Babul@ Bablu was used. She affirmed that she did not find any involvement of accused Babul and accused Arshad Ali Miah opened the said account and used to operate the said account. She denied the suggestion that accused persons are innocent.

P.W. 10 A.K.M. Mahbub Hossain is the Senior Principal Officer(Rtd), P.W. 11 Mojibul Haque Bhuiyan is the AGM and P.W. 12 Mozammel Haque is the Senior Principal Officer(Rtd) of Rupali Bank Ltd. They were tendered by the prosecution and declined by the defense.

D.W. 1 A.K.M. Mahbub Hossain is the Senior Principal Officer of Rupali Bank Ltd. He stated that during the preliminary inquiry as a member of the inquiry committee, he found that accused Arshed Ali Mia, Cashier accused Rustom Ali Matubbar and Ashraf Ali were responsible. Subsequently, the inquiry committee found that 03(three) persons were responsible. They are the cashier and second officer. Others were not responsible. He recovered Tk. 50,00,000 from the accused Arshed Ali Mia. He denied the suggestion that all are responsible for the occurrence.

The learned advocate Mr. Golam Mustafa Lashkar appearing on behalf of the accused Mustafa Kamal Lashkar submits that accused Mustafa Kamal Lashkar is a godown keeper and no allegation has been specifically made in exhibit Nos. 2 and 3 as regards the misappropriation of a particular amount against him and he discharged his duty in the Rupali Bank Limited, Sadarghat Branch under compelling circumstances. No allegation has been made against him that he adjusted any balancing of any specific account used for misappropriation of the money. The learned Advocate Mr. Golam Mostofa Lashkar appearing on behalf of accused Nurul Haque Khokon submits that he is an account holder and not named in the FIR and there is no specific allegation against accused Nurul Haque Khokon that using any cheque of his account money was withdrawn illegally and the learned Magistrate who recorded the statement of accused Arshed Ali Mia was not examined by the prosecution to prove the statement of accused Arshed Ali Mia recorded under section 164 of the Code of Criminal Procedure, 1898. He further submits that no cheque drawn on the account of Nurul Haque Khokan was proved by the prosecution to show that the accused Nurul Haque Khokon issued any cheque to withdraw any money from his account illegally. He prayed for the acquittal of

the accused Mostafa Kamal Lashkar and the accused Nurul Haque Khokon.

The learned Advocate Mr. M.M.A Siddique appearing on behalf of the accused Md. Kamruzzaman submits that he is a godown keeper and not named in the FIR and the prosecution failed to prove the charge against the accused by adducing any legal evidence. He further submits that in exhibits- 2 and 3 it has been specifically mentioned that only the banking staff of the Rupali Bank Ltd, Sadarghat Branch misappropriated the money and no specific allegation has been made in exhibits 2 and 3 that accused Kamaruzzman misappropriated any particular amount. He also submits that no specific allegation has been made against the accused Kamruzzaman that he adjusted the balancing of any account used to misappropriate the money. Therefore he played for acquittal.

The learned Advocate Mr. Mamun Kabir appearing on behalf of the accused Babul @ Bablu submits that the accused Babul is neither named in the FIR nor he is an account holder of the Rupali Bank, Sadarghat Branch. The principal accused Arshad Ali Mia (dead) himself open the fake account in the name of Babul and he used to operate the account to withdraw the money of the account holder. He further submits that in the inquiry reports (exhibits- 2 and 3) it has been specifically mentioned that neither any picture of the account holder Babul is kept with the records nor any address of the Babul is given in the account opening form which is also corroborated by P.W. 9. The prosecution failed to prove the charge against the accused Babul@Bablu beyond all reasonable doubt. He prayed for acquittal.

The learned advocate Md. Taharim Salma Lina appearing on behalf of the accused Md. Rustom Ali Matubbor submits that the accused Rustom Ali Matubbar is a UDA-cum-Cashier and he

discharged his duty under the instruction of his superior officer Arshed Ali Mia. He bonafide signed the vouchers and did not withdraw any amount from any account. Drawing attention to evidence of P.W. 9 the learned Advocate submits that only the accused Arshad Ali Mia is responsible for the alleged misappropriation of the money. Therefore, she prayed for the acquittal of the accused Rustam Ali Matubbar.

The learned Advocate Mr. Safayeat Hossain appearing on behalf of the accused Md. Zakir Hussain submits that accused Md. Zakir Hussain is a Godown Chaukidar and there is no specific allegation against him in the inquiry reports (exhibit-2 and 3) that he misappropriated any amount mentioned in the charge sheet. He further submits that during the pendency of the appeal, the accused Md. Zakir Hussain died. Therefore, the impugned judgment and order of conviction and sentence so far relate to the accused Md. Zakir Hussain is abated. He prayed for setting aside the sentence of fine imposed by the trial Court.

None appears on behalf of accused Abdul Matin Mollah.

The learn Advocate Mr. A.K.M. Fazlul Haque appearing on behalf of respondent No. 2, Anti-Corruption Commission, submits that accused Abdul Matin Mollah and Rustom Ali Matubbar are the banking staff of Rupali Bank Ltd, Sadarghat Branch and in convenience with Principal Officer accused Arshad Ali Mia(dead), they illegally withdraw the money from the account of different account holders using the account of co-accused Babul@ Bablu and Nurul Haque Khokan and without crediting the money in the account of the depositors misappropriated. The prosecution witnesses proved the charge against the accused Abdul Motin Mollah and accused Rustom Ali Matubbar beyond all reasonable doubt. He further submits that accused Mustafa Kamal Lashkar,

accused Md. Zakir Hussain and Md. Kamruzzaman used to adjust the balancing of the accounts and accused Nurul Haque Khokan and accused Babul @ Bablu used to illegally withdraw the money deposited by the account holders without crediting the deposits in the account of the depositors. The accused persons in connivance with each other misappropriated the money and the prosecution proved the charge against the accused persons beyond all reasonable doubt. Therefore, he prayed for the dismissal of the appeals.

I have considered the submission of the learned Advocates who appeared on behalf of the appellants and the learned Advocate Mr. A.K.M. Fazlul Haque who appeared on behalf of respondent No. 2, perused the evidence adduced by the parties, impugned judgment and order passed by the trial court and the records.

On perusal of the records, it transpires that the prosecution proved the FIR in Special Case No. 29 of 2003 as exhibit-1 and the application dated 31.3.1992 as exhibit-1/Ka. Inquiry Report dated 10.05.1998 as exhibit-2, report of the 9 members committed dated 16.07.1998 as exhibit-3, seizure list dated 11.7.2004 as exhibit-4, the Jimmanama (bond) as exhibit-5 and the letter of approval of the Anti-Corruption Commission for submitting charge sheet as exhibit-6. All those exhibits were also exhibited in Special Case No. 29/Ka of 2003. Exhibit Nos.1 to 5 of Special Case No. 29 of 2003 are also similar exhibits in all other special cases. Only exhibit-6, the letter of approval dated 24.11.2008 was exhibited in Special Case No. 29 of 2003.

On perusal of the records, it appears that accused Arshad Ali Mia made a statement under section 164 of the Code of Criminal Procedure, 1898 admitting his guilt as regards the misappropriation of Tk. 1,71,00,000. During the trial, the prosecution did not examine the Magistrate Abul Kashem who recorded the statement of accused

Arshed Ali Mia under section 164 of the Code of Criminal Procedure, 1898. Therefore, there is no scope to consider the statement of co-accused Arshed Ali Miah recorded under section 164 of the Code of Criminal Procedure, 1898 against other accused persons. Furthermore, after submitting charge sheet, co-accused Arshed Ali Miah died and no trial was held in respect of accused Arshad Ali Miah.

On scrutiny of the evidence, it transpires that before submitting the charge sheet accused Abdur Rashid died and after submitting charge sheet the Principal accused Arshad Ali Mia died. The trial was held in respect of the banking staff namely, (1) Abdul Matin Mollah and (2) Md. Rustom Ali Matubbar. The accused Mustafa Kamal Lashkar, accused Md. Kamruzzaman are godown keepers and accused Md. Zakir Hussain is godown chaukidar. They are not the banking staff of the Rupali Bank Limited, Sadarghat Branch. The accused Mostafa Kamal Lashkar, accused Md. Kamruzzaman and Md. Zakir Hossain are the master roll employee and non-banking staff.

On perusal of the evidence of prosecution witnesses, it reveals that the authority of the bank forms two committees. Buildup-cum-Finalization of Demand Committee was formed headed by DGM A.N.M Nazrul Islam. P.W. 2 AGM Ataur Rahman and P.W. 10 Principal Officer A.K.M. Mahabub Hossain were the members of the said committee. P.W.2 proved the inquiry report dated 10.5.1998 submitted by the Buildup-cum-Finalization of Demand Committee as exhibit-2. Sixty-three account holders filed applications to the bank stating that total Tk. 1,84,50,820 was misappropriated. Buildup-cum-Finalization of Demand Committee rejected the claim of Tk. 7,70,000 of 4(four) accused holders and accepted total claim of Tk. 1,61,02,215 of 58(fifty eight) account holders. The buildup-cum-Finalization of Demand Committee

subsequently accepted that Tk. 76,44,515 of 28(twenty eight) account holders were misappropriated.

Another 9(nine) members committee was formed by the General Banking Division, Head Office, Rupali Bank Limited headed by P.W. 3 Md. Quddus Mia, AGM Rupali Bank Limited, Head Office. P.W. 8 and 7 (seven) others were the members of the said committee. P.W. 3 Md. Quddus Mia proved the inquiry report dated 16.07.1998 submitted by the 09(nine) members committee as exhibit-3. On perusal of the report (exhibit-3) submitted by the 9(nine) members committee formed by the General Banking Division, Rupali Bank Ltd. Head Office, Dhaka, it reveals that after the transfer of the accused Arshed Ali Mia by Area Office on 18.02.1998, he was released on 23.02.1998 from the Rupali Bank Ltd. Sadarghat Branch, Dhaka and again on 24.02.1998 he was transferred on deputation to the Rupali Bank Ltd, Sadarghat Branch, Dhaka by the Area Office, Rupali Bank Ltd and the accused Arshed Ali Mia discharged his duty in the said branch on deputation till 5.3.1998 and during the said period, accused Arshed Ali Mia again misappropriated Tk. 37,62,000 in a similar manner as misappropriated earlier. It is clear as daylight that the higher authority of Rupali Bank Ltd at the relevant time was also involved with the misappropriation of money of account holders of Rupali Bank Ltd, Sadarghat Branch, Dhaka. There is a fiduciary relationship between the account holders and the bank, but the officer of the said branch and the higher authority of the Rupali Bank Ltd at the relevant time ruined the faith of the account holders of the said branch.

It is found that the godown keepers/godown chowkidars are non-banking staff and they are not the authorized staff to discharge banking duty. They were engaged by the Manager of Rupali Bank, Sadarghat Branch, Dhaka to facilitate the day-to-day transactions.

They are master roll employees and the inquiry committee in exhibit-3 made findings about the godown keepers and godown chowkidars that;

> ‘‘শাখার প্রাক্তন ব্যবস্থাপক জনাব নুরুল আমীন চৌধূরী এবং জনাব মজিবর রহমান কর্তৃক সংঘটিত অনিয়মের বিষয় অত্র প্রতিবেদনের অনুচ্ছেদ-৯ এবং ১০(৫) এ বর্ণিত হয়েছে। অফিসার সর্বজনাব, আঃ মতিন মোল্লা, আঃ রশিদ এবং কোষাধ্যক্ষ সর্বজনাব রুস্ম আলী মাতব্বর, আশ্রাফউদ্দিন খান, মোঃ সাদুল্লাহ এদেরকে শাখায় সংঘটিত জাল জালিয়াতী ও অর্থ আত্মসাৎ ঘটনার সাথে সরাসরি জড়িত দেখা যায় যা অত্র প্রতিবেদনের সাথে সংযুক্ত পরিশিষ্ট ‘খ’ তে বিশদভাবে উল্লেখ করা হয়েছে। শাখার ৩ জন অস্থায়ী গোডাউন ষ্টাফ সর্বজনাব কামরুজ্জামান, মোস্ফা কামাল, জাকির হোসেন যাদেরকে শাখা খাতক কর্তৃক নিয়োগপত্র দেয়া হয়। তারা বিভিন্ন সময়ে শাখার টোকেন ইস্যু ও স্ক্রল নম্বর প্রদান এবং লেজার বিভাগে কাজ করতেন। টোকেন ইস্যু এং স্ক্রল রেজিষ্টারে কাটাকাটি করা এবং লেজারে অনেক অবৈধ জমা/খরচ লিখনিতে তাদের সম্পৃক্ততা পরিলক্ষিত হয়। তাদেরকে অন্যায় কার্যক্রমে সহযোগীতা ও অংশগ্রহন ব্যাতীত সরাসরি অর্থ আত্মসাতে জড়িত দেখা যায় নি। এ সকল কর্মচারী অনিয়ম সংঘটনে অস্বীকৃতি জানালে বা সহযোগীতা না করলে অর্থ আত্মসাৎ কর্মকান্ড এত বিস্ত আকার ধারন করত না বরং তা রোধ কল্পে সহায়ক হতো।’’

In the report dated 16.07.1998 (exhibit-3) submitted by the 9 (nine) members inquiry committee as regards the balancing of the deposits and withdrawal of the money, it has been mentioned that;

> ‘‘শাখায় বর্তমানে ০৬ টি চলতি ও ৯টি সঞ্চয়ী হিসাব লেজার আছে। লেজারে অসংখ্য ভূয়া ডেবিট/ক্রেডিট লিখনি দেখা যায়। এরুপ লিখনির জন্য সাপ্তাহিক/পাক্ষিক লেজার ব্যালেন্সিং এর গড়মিল হওয়ার কথা। টেষ্ট চেক হিসেবে সময়ে সময়ে শাখা ব্যবস্থাপক নিজে লেজার ব্যালেন্সিং করলে শাখায় সংঘটিত অনিয়ম অনেক আগেই ধরা পড়তো। কিন্তু শাখার লেজার সমূহ নিয়মিত সঠিক ব্যালেন্সিং হচ্ছে কি না সে বিষয়ে তিনি ছিলেন চরম উদাসীন।
>
> শাখার লেজার ব্যালেন্সিং এর জন্য বরাদ্ধ বহি(এ্যালোটমেন্ট রেজিষ্টার) এবং লেজার ব্যালেন্সিং বই পর্যালোচনায় দেখা যায় বরাদ্ধ বই এ সর্বদা জনাব আরশাদ আলী লেজার সমূহ বরাদ্ধ করে দিতেন এবং শাখা ব্যবস্থাপক জনাব হামিদুর রহমান শুধূমাত্র স্বাক্ষর করতেন। বরাদ্ধ আদেশে প্রায়ই কোন চেকিং

কর্মকর্তার নাম উল্লেখ থাকত না এবং জনাব হামিদের নামে কখনো কোন লেজার বরাদ্ধ দেয়া হতো না।

শাখার জাল জালিয়াতীর ব্যাপকতা লাভের সময়কালে বিশেষ করে ১৯৯৬ ও ১৯৯৭ সনের লেজার ব্যালেন্সিং বরাদ্ধ বই এবং লেজার ব্যালেন্সিং বই (এস,বি, ১০৬) সমূহ নিরীক্ষান্তে পরিলক্ষিত হয় বরাদ্ধ পত্রে কোন লেজার কোন কর্মকর্তা/কর্মচারীর নামে বরাদ্ধ করা হলেও ব্যালেন্সিং বই এ অধিকাংশ ক্ষেত্রে জনাব আরশাদ আলী কর্তৃক ব্যালেন্সিং করা এবং তার স্বাক্ষর দেয়া। অনেক সময় কোন লেজার ২/৩ সপ্তাহ পর্যন্ত বরাদ্ধকৃত কর্মকর্তা/কর্মচারী ব্যালেন্সিং করতে না পেরে ফেলে রাখতেন। পরবর্তী সময়ে জনাব আরশাদ আলী নিজ নামে উক্ত লেজার বরাদ্ধ করে ব্যালেন্সিং করে দিতেন।"

In the inquiry report dated 10.05.1998 (exhibit-2) and the inquiry report dated 16.07.1998 (exhibit-3) both the inquiry committee had given a detailed report against the banking staff as regards the misappropriation of a particular amount but no statement was made in those reports as regards the misappropriation of specific amount against the non-banking staffs i.e. Godown keeper Mustafa Kamal Lashkar, Godown Chowkidar Md. Zakir Hussain, Godown keeper Md. Kamruzzaman, account holders Nurul Haque konkan and Babul @ Bablu.

The inquiry report (exhibit-3) was submitted on 16.07.1998. In the said report dated 16.07.1998 (exhibit-3) it has been mentioned that accused Arshad Ali Mia (dead) solely misappropriated Tk. 1,08,62,090 from 30.10.1997 to 22.02.1998. Accused Abdur Rashid and accused Rustom Ali misappropriated Tk. 6,30,000 by 3 (three) vouchers. The accused Arshad Ali and Rustom Ali jointly misappropriated Tk. 81,36,500 from 03.11.1997 to 18.11.1998. The accused Arshad Ali Mia and the accused Ashraf Uddin Khan jointly misappropriated Tk. 25,90,000 from 14.09.1995 to 21.12.1997. The accused Arshad Ali Mia and the accused Abdul Matin Mollah jointly misappropriated Tk. 8,00,000 on 15.02.1998. The accused

Abdul Matin Mollah solely misappropriated Tk. 16, 61,800 in 1998, accused Abdul Matin Mollah and Rustom Ali Matubbar jointly misappropriated Tk. 3,90,000 from 21.10.1997 to 12.03.1998, accused Abdur Rashid alone misappropriated Tk. 4,35,000 in 1998, accused Abdul Rashid and Rustam Ali Matubbar jointly misappropriated Tk. 6,30,000 in 1998, accused Abdur Rashid and Ashraf Uddin Khan jointly misappropriated Tk. 100,000 in 1998, accused Abdul Rashid and Md. Sad Ullah jointly received Tk. 200,000 in 1998, former Manager Nurul Amin Chowdhury (not accused) and accused Arshad Ali Miah (dead)jointly misappropriated Tk. 10,00,000 on 30.12.1989. The Manager Mojibur Rahman (not accused) and Arshed Ali Mia jointly misappropriated Tk. 800,000 on 16.08.1995. The 9(nine) members inquiry committee opined that the said banking staff misappropriated the total Tk. 2,82,35,390.

A scrutiny of the inquiry reports (exhibit-2 and 3) further reveals that said two inquiry committees after examination of the ledger book, statement of accounts and the applications filed by the account holders submitted those reports. During the investigation, the investigating officer Sub-Inspector Mehbub (CID) seized many cheques but during the trial, the prosecution did not prove those cheques by which the accused persons allegedly withdrew and misappropriated the huge amount of money of the account holders. The ledger book, balancing register, vouchers and cheques were not produced and proved by the prosecution. Although the basis of the inquiry reports (exhibit 2 and 3) was not proved by the prosecution during trial, none of the accused persons cross-examined P.Ws as regards the inquiry reports (exhibit 2 and 3). Therefore, I am of the view that the inquiry reports dated 10.05.1998 and 16.07.1998 (Exhibit- 2 and 3) respectively remained uncontroverted by the

defense and this court can safely rely on exhibits- 2 and 3 to find the accused persons guilty of the offence committed by them.

In the application dated 30.03.1998(exhibit-1/ka) filed by the informant to the investigating authority, it has been mentioned that the Officer of the Rupali Bank Ltd accused Md. Asraf Uddin Khan misappropriated Tk. 6,55,000, the Principal Officer accused Nurul Amin Chowdhury misappropriated 10,00,000 and accused Mujibur Rahman misappropriated Tk. 11,05,000. The said 3(three) accused persons jointly misappropriated total Tk. 27,60,000. On consideration of exhibits-1/Ka, exhibit-2 and 3, it reveals that during the investigation, it was proved that officer Md. Sad Ullah, Officer Md. Ashraf Uddin Khan, Principal Officer Nurul Amin Chowdhury and Manager Mujibur Rahman also misappropriated a huge amount of the account holders. There was sufficient evidence of misappropriation against said officers of the bank but they were not sent up in the charge sheet as accused which speaks a volume against fair investigation of the case.

The allegation against the account holders Nurul Haque Khokon and Babul @ Bablu is that they have issued the cheques from their accounts maintained with Rupali Bank Limited, Sadarghat Branch, Dhaka to illegally withdraw the money deposited by other account holders for misappropriation. During the trial, the prosecution did not prove any cheque of account holders accused Nurul Haque Khokon and accused Babul @ Bablu to show that they issued cheques to illegally withdraw money deposited by other account holders. P.W. 9 Investigating Officer Selina Akhtar admitted that she did not find any involvement of accused Babul@Bablu. The accused Arshad Ali Mia himself opened the account in the name of Babul@Bablu and the accused Arshad Ali Miah used to operate the account opened in the name of Babul@ Bablu. In exhibit-3 has been was mentioned that there was no

photograph and the address of the accused Babul in the account opening form. P.W. 9 admitted that accused Arshad Ali Mia is solely responsible for the misappropriation of the money mentioned in the charge sheet Nos. 168 Ka to 168 Gha and he did not find any involvement of any other accused persons. She also did not find any involvement of accused Nurul Haque Khokon in respect of charge sheet No. 168 Umo to 168 Chha. Therefore, I am of the view that accused Arshed Ali Mia opened a fake account in the name of accused Babul@Bablu and he used to operate the said account to misappropriate the money deposited by the account holders. Because of the above evidence, findings and observation, I do not find any involvement of accused Nurul Islam Khokon and Babul @ Bablu in the misappropriation of any amount deposited by the account holders of the Rupali Bank Limited, Sadarghat Branch, Dhaka.

On perusal of the inquiry report dated 16.07.1998 (exhibit-3) it appears that Principal Officer accused Arshed Ali Mia alone misappropriated total Tk. 1,08,62,092 from 30.10.1997 to 18.11.1998. He is the mastermind of the whole misappropriation. It further reveals that accused Rustom Ali Matubbar during his tenure from 3.9.1997 to 16.3.1998 along with other officers misappropriated total Tk. 91,56,500. Fact remains that accused Rustom Ali Matubbar is a UDA-cum-Cashier and he discharged his duty under the instruction of accused Arshad Ali Miah(now dead).

The evidence produced before the court depicts that only the banking staff who were authorized by the Manager at the relevant time to do the banking transaction are responsible for the misappropriation of the amount mentioned in the inquiry reports (exhibit 2 and 3). The godown keepers and godown chowkidar are scapegoats. It was found that accused Arshad Ali Miah (dead) was the mastermind of the offence and after submitting charge sheet, he

died. The concerned Managers of the bank against whom there was specific evidence of misappropriation of the money of the account holders were not sent up in the charge sheet. The higher authority of the Rupali Bank Limited at the relevant time failed to discharge their duty following the law and ruined the faith of the account holders allowing the accused Arshad Ali Miah (now dead) to further misappropriate Tk. 37,00,000 during the departmental inquiry.

In the inquiry reports (exhibits- 2 and 3) the allegation has been made against the godown keepers and Godown chowkidar that they have assisted the officers of the bank in misappropriation of the funds of the account holders by issuing tokens, scroll numbers and tempering the scroll register and ledger. During the trial, no scroll register and ledger were proved by the prosecution. No specific statement was made in exhibit- 2 and 3 that they have tempered the particular scroll register and the ledger. Furthermore, in exhibit 3 it has been mentioned that when the balancing could not be adjusted by the godown keepers and godown chowkidars, they kept the matter pending. Subsequently, accused Arshad Ali Miah adjusted the balance. Therefore, I am of the humble view that the godown keepers and godown chowkidar were not responsible for tempering the scroll register and the ledger. Nothing is mentioned in the inquiry report (exhibit-3) that Godown keepers accused Mostafa Kamal Lashkar and accused Kamruzzaman, and Godown Chowkidar accused Md. Zakir Hossain misappropriated any particular amount. The allegations against the godown keepers and godown chowkidar are vague and unspecified.

On a scrutiny of the enquiry report dated 16.07.1998 (exhibit-3) it transpires that accused Arshad Ali Miah and Rustom Ali Matubbor jointly misappropriated total Tk. 82,36,500 and accused Abdur Rashid and Rustom Ali Matubbar jointly misappropriated Tk. 6,30,000. The accused Rustom Ali Matubbor

along with Abdul Matin Mollah misappropriated Tk. 3,90,000. Therefore it appears that accused Rustom Ali Matubbar along with Arshed Ali Miah, Abdur Rashid and Abdul Motin Mollah misappropriated total Tk. 92,56,500. In exhibit 3 it has been mentioned that accused Abdul Matin Mollah solely misappropriated Tk. 16, 61,800. The accused Abdul Matin Mollah along with Rustom Ali Matubbar misappropriated Tk. 3,90,000. The accused Abdul Motin Mollah and Arshad Ali Miah misappropriated Tk. 8,00,000. Therefore, accused Abdul Matin Mollah alone misappropriated Tk. 16,61,800 and along with Rustom Ali Matubbar and Arshad Ali Miah misappropriated Tk. 11,90,000. He was involved in the misappropriation of total Tk. 28,51,800.

Because of the above facts and circumstances of the case, evidence, observation, finding, reasoning, and proposition, I am of the view that the prosecution failed to prove the charge against the accused Mustafa Kamal Lashkar, accused Md. Zakir Hossain, accused Md. Kamruzzaman, accused Nurul Haque Khokan and accused Babul@Bablu beyond all reasonable doubt. In the result, Criminal Appeal Nos. 10786 of 2019, 13499 of 2019, 9492 of 2019 and 9257 of 2019 are allowed. The impugned judgment and order of conviction and sentence passed by the trial court so far relate to accused Mustafa Kamal Laskar, accused Md. Kamruzzaman, accused Babul @Bablu and accused Nurul Haque Khokan are hereby set aside. They are discharged from their bail bond.

It is found that during pendency of the appeal, the appellant Md. Zakir Hossain died on 06.03.2023. Therefore, the Criminal Appeal No. 3650 of 2020 so far relates to conviction and sentence of imprisonment passed the by the trial court is abated and the appeal so far relates to sentence of fine is set aside.

It is found that accused Rustom Ali Matubbor misappropriated total Tk. 92,56,500 along with other officers and he is a UDA-cum-Cashier and discharged his duty under the instruction of his superior officers. The accused Abdul Matin Mollah himself misappropriated Tk. 16,61,800 and he also misappropriated Tk. 11.90,000 along with two other officers. Therefore, the judgment and order of conviction so far relates to the accused Abdul Matin Mollah and Md. Rustom Ali Matubbor is hereby affirmed.

Considering the gravity of the offense, I am of the view that the ends of justice would be best served if the sentence passed by the trial court against accused Abdul Matin Mollah and accused Md. Rustom Ali Matubbar is modified as under:

The accused Abdul Matin Mollah and accused Md. Rustom Ali Matubbar are found guilty of the offence under section 409 of the Penal Code,1860 read with section 5(2) of the Prevention of Corruption Act, 1947 and they are sentenced to suffer rigorous imprisonment for two years and a fine of Tk. 20,00,000 each.

The Criminal Appeal Nos. 14858 of 2019 and 5685 of 2020 are disposed of with modification of sentence.

The fine imposed by this court is recoverable following the law.

The trial court is directed to do the needful.

Send down the lower Court's record at once.

(Md. Shohrowardi, J)