
(2024) 02 GAU CK 0013

Gauhati High Court

Case No: Criminal Appeal No. 210 Of 2009

Md. Khalilur Rahman

APPELLANT

Vs

State Of Assam (CBI)

RESPONDENT

Date of Decision: Feb. 12, 2024

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 313, 374(2)
- Indian Penal Code, 1860 - Section 409, 419, 420
- Prevention of Corruption Act, 1988 - Section 13, 13(1)(d), 13(2), 19
- Evidence Act, 1872 - Section 103, 114(g)

Hon'ble Judges: Robin Phukan, J

Bench: Single Bench

Advocate: D. Talukdar, M. Haloi

Final Decision: Allowed

Judgement

1. Heard Mr. D. Talukdar, learned counsel for the appellant and Mr. M. Haloi, learned Special Public Prosecutor, CBI.

2. In this appeal, under Section 374[2] of the Cr.P.C., the appellant namely, Khalilur Rahman has put to challenge the correctness or otherwise of the judgment and order dated 21.10.2009, passed by the learned Special Judge, CBI, Assam in the Special Case No. 07/2005.

3. It is to be noted here that vide judgment and order dated 21.10.2009, the learned court below has convicted the appellant under Sections 419/420 of the IPC, read with Sections 13[1][d]/13[2] of the PC Act. It is also to be noted here that vide aforementioned judgment and order, the learned court below has sentenced the appellant to suffer rigorous imprisonment for 1 year with fine of Rs.1,000/- with default stipulation under Section 419 of the IPC and further sentenced to suffer rigorous imprisonment for 2 years with fine of Rs.5,000/- with default stipulation

under Section 420 of the IPC and also to suffer rigorous imprisonment for 2 years with fine of Rs. 5,000/- with default stipulation under Section 13[1][d]/13[2] of the Prevention of Corruption (PC) Act.

4. The background facts, leading to filling of this appeal are briefly stated as under:-

"The Chief Executive Director of the Assam State Cooperative Agricultural and Rural Development Bank [ASCARD] Shri N.N. Borkakati had lodged two identical complaint on 06.04.1998, with the Officer In-Charge Paltan Bazar Police Station, against one Sri Khireswar Saikia, the then Chief Executive Director In-Charge and one Pahar Khan, the then Manager In-Charge and the General Manager In-Charge of the ASCARD Bank. The allegation levelled against the aforesaid two officers is that they illegally recommended for sanction or pleaded for sanction/payments in their respective capacities, huge amount of money belonging to the fund of the ASCARD Bank in favour of the various firms and individuals in the form of contractual money, Breeze loan and car loan to Kamal Talukdar, Zakirur Rahman and Atiqur Rahman Hazarika in violation of the prescribe procedure and norms set by the Bank and thereby caused wrongful gain to themselves. Upon the said complaint the Officer In-Charge of the Paltan Bazar Police Station registered two cases being Paltan Bazar P.S. Case No. 199/1998 and 202/1998, under Section 409 of the IPC. Though the case was initially investigated by the State Police, later on, the same was transferred to CBI and thereafter, the CBI has registered a case being R.C. 5/E/2001 and 6/E/2001 Cal. Thereafter, the CBI has carried out investigation and on completion of the investigation, it has submitted charge sheet, being charge sheet No. 06/2004, dated 07.01.2004, against the present appellant, under Section 419/420 of the IPC, read with Section 13(1)(d)/13(2) of the PC Act and upon which the Special Case No.07/2005, came to be registered. Thereafter, hearing both the parties, the learned court below has framed charges against the appellant under Section 419/420 of the IPC read with Section 13(1)(d)/13(2) of the PC Act and on being read over and explained over the same to the appellant, the appellant pleaded not guilty and claimed to be tried. Thereafter, the learned court below has examined as many as 13 witnesses and after completion of examination of witnesses, the learned court below has examined the appellant under Section 313 of the Cr.P.C. The appellant has declined to adduce any evidence in his defence. Thereafter, hearing the argument of the learned counsel for both the parties, the learned court below has convicted the appellant and sentenced him as aforesaid."

5. Being highly aggrieved, the appellant has preferred the present appeal on the following grounds:-

"[i] that, at time of filling of charge sheet the appellant was serving as Supervisor in the Bank, but in the charge sheet the CBI has shown him as an Ex-employee and even then sanction of prosecution in necessary, but the learned court below purportedly relying upon some of the decisions of the Hon"ble Supreme Court, illegally and erroneously came to the finding that sanction for prosecution of an

offence is not necessary and as such, the entire prosecution stands vitiated in the eye of law;

[ii] that, the loan was purportedly taken by the appellant in the name of Md. Atiqur Rahman Hazarika, but the prosecution has failed to examine the said Md. Atiqur Rahman Hazarika as the prosecution witness and as the said witness has not been examined and as he was the material witness as his signatures were purportedly forged by the appellant, the omission is fatal to the prosecution and presumption under Section 114[g] has to be drawn and without his examination conviction of the appellant under Section 419 of the IPC is not sustainable in law;

[iii] that, though the prosecution side has obtained specimen signature of the appellant and of Md. Atiqur Rahman Hazarika, yet, there is no prosecution witness to lend corroboration to the opinion of Handwriting Expert and without there being any corroborating evidence, the evidence of the Handwriting Expert cannot be relied upon to convict the appellant;

[iv] that, in the given facts and circumstances on the record it cannot be said that any offence under Section 419/420 of the IPC read with Section 13(1)(d)/13(2) of the PC Act is made out against the appellant; and

[v] that, the learned court below has failed to put the incriminating circumstances in the examination of the appellant under Section 313 of the Cr.P.C., and thereby the appellant had missed the opportunity to explain his stand and thereby prejudice is caused to him.

6. Mr. Talukdar, learned counsel for the appellant submits that in fact the appellant, being an employee of the ASCARD Bank stood as guarantor for a loan obtained by his brother, Md. Atiqur Rahman Hazarika and at the relevant point of time the appellant was working as Supervisor in the aforesaid Bank. Reiterating the points mentioned in the memo of appeal, Mr. Talukdar submits that there is no direct evidence for commission of the offence under Section 419/420 of the IPC read with Section 13(1)(d)/13(2) of the PC Act. Mr. Talukdar, further submits that though the prosecution side has obtained report of Handwriting Expert and the learned court below also relied upon the same for recording the conviction of the appellant, there is no other materials to lend corroboration to the opinion of the Handwriting Expert and without there being any corroborating evidence, the report of Handwriting Expert cannot be the sole criteria for recording conviction of the appellant. Mr. Talukdar also submits that the allegation that the signature of Md. Atiqur Rahman Hazarika was forged by the appellant, but said Md. Atiqur Rahman Hazarika was not examined as the prosecution witness and for non-examination of the said witness, adverse inference can be drawn against the prosecution under Section 114[g] of the Evidence Act. Mr. Talukdar lastly submits that there is no prosecution sanction though at the relevant time of commission of the offence, the appellant was serving as Supervisor of the aforesaid Bank and under the aforesaid facts and

circumstances, it is contended to set aside the impugned judgment and order dated 21.10.2009, and to allow the appeal.

6.1 Mr. Talukdar, learned counsel for the accused/appellant, to bolster his submission has referred following case laws:-

[i] Alamgir vs. State [NCT Delhi], reported in [2003] 1 SCC 21 and

[ii] Subash Chandra Sharma vs. State of Assam and Ors., reported in 2003[2] GLT 567.

7. On the other hand, Mr. Haloi, learned Special Public Prosecutor, CBI, submits that though there is no direct evidence against the appellant, yet, number of circumstantial evidences are there on the record and the prosecution side has successfully established the same before the learned court below beyond all reasonable doubt. Mr. Haloi, further submits that the prosecution side has relied upon the following circumstances:-

[i] the duplicate copy of sale certificate i.e. the Exhibit-3;

[ii] fixed deposit voucher for Rs.10,000/- given by the appellant;

[iii] he was serving in the ASCARD Bank, Sivasagar Branch;

[iv] Md. Atiqur Rahman Hazarika, whose signature was forged by the appellant, was his own brother;

[v] specimen signatures of Khalilur Rahman and Atiqur Rahman Hazarika were confirmed by the PW1 and PW2 and specimen signatures of Md. Atiqur Rahman Hazarika were confirmed by the PW4 and PW5, and these signatures were not disputed by the appellant; and

[vi] salary certificate of the appellant i.e. Exhibit-10.

7.1 Mr. Haloi, further submits that these aforesaid circumstances form a complete chain to point out the guilt of the appellant unerringly. Mr. Haloi also submits that non-examination of Md. Atiqur Rahman Hazarika is not fatal to the prosecution in as much as he is the brother of the appellant and as such, he is unlikely to support the prosecution case and it is the prerogative of the prosecution to whom it will examine or not as witness. Mr. Haloi also submits that the issue of sanction, as provided in Section 19 of the P.C. Act, could not have been raised at this stage, as the same was not raised at the first instance before the learned court below and that as per Section 103 of the Evidence Act Clause 3 and 4, the onus stands shifted to the appellant, but throughout the trial he remain silent and he never raised the issue at the time of framing of charge also, and therefore, he cannot take such a plea at this stage. Under aforesaid facts and circumstances, Mr. Haloi contended to dismiss this appeal.

7.2 Mr. Haloi, learned Special Public Prosecutor, CBI to bolster his submission, has referred following case laws:-

[i] Murari Lal vs. State of Madhya Pradesh, reported in [1980] 1 SCC 704;

[ii] Harpal Singh vs. Devinder Singh and Another, reported in [1997] 6 SCC 660;

[iii] Rajendra Kumar vs. State of U.P., reported in [1998] 9 SCC 343; and

[iv] Alamgir vs. State [NCT Delhi], reported in [2003] 1 SCC 21.

8. Having heard the submissions of learned counsel for both the parties, I have carefully gone through memo of appeal as well as the grounds mentioned therein and the documents placed on record and also perused the case laws referred by the learned counsel for both the parties.

9. It appears that the learned court below had framed following charges against the appellant:-

[i] Whether the accused Md. Khalilur Rahman, cheated the ASCARD Bank, Guwahati, in respect of obtaining the said vehicular loan impersonating his brother, one Md. Atiqur Rahman Hazarika by signing in the latter's name the concerning loan application and the related documents for securing the loan in question from that bank and in purchasing the vehicle by virtue thereof, as alleged in the case being punishable under Section 419 of the IPC?

[ii] Whether the accused deceived the said bank and had thereby dishonestly/fraudulently induced the same to deliver in the name of Md. Atiqur Rahman Hazarika the vehicular loan of Rs.6,08,611/-, which the bank would not have otherwise advanced to him, causing wrongful loss to the bank, as alleged in the case being punishable under Section 420 of the IPC?

[iii] Whether the accused, being the said public servant at the relevant time committed criminal misconduct by abusing his position as such public servant adopting corrupt/illegal means without any public interest taking pecuniary advantage out of his alleged activities, as alleged in the case being punishable under Section 13[1][d] read with Section 13[2] of the P.C. Act, 1988?

9.1 Thereafter, considering the evidence placed on record and the documents exhibited and also considering the submissions of learned counsel for both the parties, the learned court below has decided all the points against the appellant and held that the offence under Sections 419/420 of the IPC, read with Section 13(1)(d)/13(2) of the PC Act stands well established.

10. It is to be noted here that the learned court below had examined as many as 13 witnesses and 4 court witnesses and also Exhibited as many as 64 documents. In order to appreciate the submissions advanced at the bar, a brief reference to the evidence on the record is found to be necessary and accordingly, the same are

being discussed herein below.

10.1 PW-8, is Sri Nitya Nanda Barkakati, who had lodged the two FIRs, Exhibit 27 and 28. His evidence reveals that in the year 1997-1998 he joined as the Chief Executive Director in the ASCARD Bank and on the day of his joining some staff have complained him about the financial irregularities that were going on in the Bank and they had not been provided with salaries for months together. Later on, he came across an exhaustive inquiry report of the then Registrar, Co-Operative Societies, Assam and on the basis of which he had filed an FIR before the Paltanbazar PS, on 06.04.1998, Exhibit 27 and another FIR on the same day, Exhibit-28. It is elicited in his cross-examination that along with one Atiqur Rahman there are other borrowers namely, Kanak Talukdar and Jakirur Rahman Bora who have availed loan from the said bank.

10.2 PW-9, Sri Parimal Choudhury, was working as Officer In-Charge of Paltanbazar PS. He testified that on 12.04.1998, he registered a case, being 199/1998 and 202/1998, under Section 409 of the IPC, based on the FIRs lodged by Sri Nitya Nanda Barkakati and said cases were endorsed to SI F. Barbhuyan to investigate the case.

10.3 PW-10, Sri Joy Ram Das, who testified that he investigated the Paltanbazar Case No. 199/1998 and 202/1998, but, he could not complete the investigation of the same and Exhibit- 56 is his letter given to the then CJM, Kamrup at Guwahati requesting for amalgamation of the Paltanbazar PS Case Nos.199/1998 and 202/1998 and thereafter, he had handed over the documents pertaining to the aforesaid two cases to the Inspector P.S. Bose, CBI, Kolkata, EOW. Admittedly, he has not seen the documents on the basis of which the cases were handed over by the CID to the CBI.

10.4 PW-1- Shri Upendra Nath Goswami is a witness of seizure. His evidence reveals that Exhibit-1 is the paper containing specimen signature of accused/appellant Khalilur Rahman, who put his signature as Atiqur Rahman Hazarika, and he was working as Supervisor at Sivasagar branch of ASCARD Bank prior to 2001. He also confirmed Exhibit-2, a seizure list by which some document were seized from Khalilur Rahman. It is elicited in cross-examination of this witness that the documents seized vide seizure list Exhibit-2, were not produced before him in the court.

10.5 PW-2, Shri Ashit Ranjan Sarkar, is also the witness of seizure and his evidence reveals that while he was working as Deputy Manager of ASCARD Bank, then the specimen signature of Md. Khalilur Rahman was taken by the CBI in his presence as Md. Atiqur Rahman Hazarika and Exhibit-1 is the said specimen signature of Md. Khalilur Rahman and Exhibit-2 is the seizure list prepared in his presence, whereby some documents relating to vehicle and one FD were seized from the possession of Khalilur Rahman and Exhibit-3 is the Form No. 21 of France Motor Car Company and Exhibit-4 is the FD deposit in the ASCARD Bank in the name of Md. Atiqur Rahman

Hazarika. Admittedly, PW-2 is not aware about the facts of the present case, except the seizure made in his presence.

10.6 PW-3, Shri Ajit Gogoi, was the Supervisor of the said bank and he proved Exhibit 5, the file index pertaining to non-firm sector loan case No.NSCAR/TME/HO/SRTO/121/96, which pertains to Atiqur Rahman Hazarika. His evidence also reveals that Atiqur Rahman Hazarika had filed an application for loan and the said file was put up by Jayanta Sharma before the General Manager, In-charge Pahar Khan and Exhibit 6 is the note sheet of the file and thereafter, the same was put up by Jayanta Sharma, to the General Manager, Pahar Khan. The Exhibit- 6/1 is the signature of Jayanta Sharma and Exhibit 6/2 is the signature of Pahar Khan. Thereafter, Pahar Khan put up the file to the Chief Executive Director Khireswar Saikia and he put up the file to the Advisor Imran Shah and after that, the file was put up to the Retainer Advocate Uzzal Baruah. Thereafter, the file was again put up before Jayanta Sharma and he put up the same to Pahar Khan and he put up the same to Khireswar Saikia and he put up the same to Imran Shah and then he put up the same to the Chairperson, Dr. Hema Prava Saikia. He confirmed the Exhibit- 7, the application form of Atiqur Rahman Saikia for financial assistance to small road transport operation and Exhibit- 8, the appraisal cum pre-sanction report and Exhibit- 9, the surety form submitted by Atiqur Rahman Saikia and Exhibit- 11, the loan sanction order dated 08.03.1996 and Exhibit- 12, the loan remittance paper and Exhibits- 13 & 14, the Deed of Guarantee and Exhibit 15, the surety form of Ranjit Rajkhowa, who stood as the surety to Atiqur Rahman Hazarika and Exhibit- 18, Hypothecation deed of Atiqur Rahman Hazarika and Exhibit-19, the membership form of ASCARD Bank in the name of Atiqur Rahman Hazarika and Exhibit- 20, the loan remittance paper and Exhibits 20/1 to 20/3, the signatures of Girish Baruah, Finance and Accounts Manager and exhibit 21, the letter given by K.N. Baruah, the then Manager. Admittedly, PW-3 had not dealt with the Exhibit- 5, the loan file of Atiqur Rahman Hazarika.

10.7 PW-4 is Sri Harish Sharmah, who was working as typist of ASCARD Bank and his evidence reveals that during 2001, he was called along with Ganesh Ch. Rai by the General Manager to his chamber and there he found some CBI officials and there in his presence, Atiqur Rahman Hazarika had given his specimen signature to CBI. He confirmed the Exhibit- 22, the specimen signature of Atiqur Rahman Hazarika and Exhibits- 22/1, 22/2 & 22/3 are his signatures as witness and Exhibits-22/4 to 22/6 are the signatures of Ganesh Ch. Rai and Exhibits- 22/7 to 22/9 are the signatures of Atiqur Rahman Hazarika.

10.8 PW-5 is Ganesh Ch. Roy, who testified the same fact like PW-4.

10.9 PW-6 is Sayed Saleh Ahmed, was the Deputy Manager of the ASCARD Bank and his evidence reveals that ASCARD Bank usually grants loan for the purpose of agriculture and agricultural development and SRTO loans are usually granted to the persons of the rural entrepreneur, for agricultural and allied purposes, such as

firms, dairy firms etc. He confirmed Exhibit 23, the loan ledger for the recovery of the loans and Exhibits 23/1 and 23/2, the relevant pages of loan disbursement details and payment in respect of Atiqur Rahman Hazarika and Exhibit 23/1, shows maintaining of interest, which was Rs. 6,14,350/- and penal interest was Rs. 27,380/- on the defaulted principal amount and till 31.01.2001, Atiqur Rahman Hazarika repaid nothing. It is elicited in his cross-examination that he is not aware of as to whether Exhibit- 23 was maintained by Manoj Talukdar, who was the Recovery Officer on that point of time. Admittedly, he has not made such statement about the loan sanction to Atiqur Rahman Hazarika before the I.O. It is also elicited that at the relevant time breeze loan was sanctioned on the basis of depositing Rs. 10,000/- as fixed deposit by the loanee as security and 10% down payment is also to be given by the loanee and the loanee also has to provide two guarantors.

10.10 PW-7 is Barhcha Lal Ram, the ASI of Police and his evidence reveals that during investigation of Paltanbazar PS Case No. 199/1998 and 202/1998, he has seized some documents and as per instruction of senior officer, he had handed over the said documents and Exhibit 25 is seizure list dated 26.02.2001. It is elicited in his cross-examination that the said documents were seized in connection with Paltanbazar P.S. cases.

10.11 PW-11 Narendra Kumar, is the Assistant GEQD, Kolkata and his evidence reveals that during the year 2001 he received Exhibit 57, a letter dated 20.06.2001, sent by the S.P. CBI, EOW, Kolkata, which consists of enclosure-I [Q1 to Q216] with some markings and annexure-II, consists of specimen signature marked as S1 to S86 and annexure-III is questionnaire from Sl. No. 1 to 26 and on receipt of the aforesaid documents the Head Office had allotted the documents for examination to him and on receipt of the documents, he himself and A.S. Gupta, the then Deputy GEQD examined the questioned documents with the standard documents, and later on, collectively come to the conclusion as per opinion dated 31.12.2001, and later on, it was examined by the Head Office and thereafter the same was forwarded by him to the S.P. CBI, EOW, Kolkata, vide letter No. DXC[04-95]/2001/164, dated 31.12.2001, and Exhibit 58 is the forwarding letter and Exhibit- 59 is the opinion and Exhibits 59/1, 59/2 and 59/3 are his signatures and Exhibits 59/4 to 59/6 are the signatures of the said A.S. Gupta and after examination of the documents he opined that the person so wrote the blue signature stamped and marked S22 to S24 did not write the red enclosed signatures similarly stamped and marked as Q16, Q17 and Q31 and he had assigned the reason for the said opinion as under:-

“The reasons for my opinion are that the questioned signatures are slow in their execution and show hesitation and concealed joining and pen lifted at unusual places, which are the sign of careful imitation. The questioned signatures when compared with the standard signatures differences were found in the general writing habit such as, scale, speed, size and preparation of letters, stopping between letters and words, movement and pressure and line

quality which is not smooth, whereas in the standard signatures it is normal and slow and show gradual pen pressure and smooth line quality etc. Considering all the differences between questioned signatures and the standard signatures I came to the conclusion of different authorships.

In respect of reference para No. 9 of the opinion dated 31.12.2001, my opinion is that the person who wrote the blue enclosed writings stamped and marked as S25 and S26 also wrote the red enclosed writings similarly stamped and marked Q16, Q17 and Q31.

The reasons for my said opinion are that the questioned writings are freely written in normal hand and agreed in both general and individual writing executed among themselves. The general writing characteristic features, movement, writing scale, coordination of stroke and alignment of letters and resultant size and preparation of letters are found similar both in the questioned writings and standard writings. The aforesaid questions are written with speed and therefore exhibits a certain degree of simplification in the normal formation of letters and words with natural variations which is integral part of genuineness, are found similar in both the questioned writings and standard writings. The questioned writings written by the person confirmed to the design and model of words as found in the standard writings. The extent of simplification depending upon the speed of execution of the writings has also been considered carefully and the quality, rhythm, force, freedom and design present in the questioned writings are found similar to that observed in the standard writings.

All the hand writing characteristics are sign of genuineness that agrees in the writings of same person. Before reaching to the conclusion, I have taken into consideration any of the basic features required to be compared. All the basic features as available for the purpose of effective comparison among the exhibits, when considering collectively, allowed me to the aforesaid opinion of common authorship."

In his cross-examination, it is elicited that natural variations are found in every person's handwriting, but, individual characteristic will remain unchanged.

10.12 P.W.-12 Sunirmal Roy, is the SI of Police, CBI, Kolkata, who has submitted charge sheet - Exhibit-62 only.

10.13 P.W.-13 is Dy. S.P. CBI- Shri Partha Sarathi Bose. He was the I.O. who had carried out the investigation. His evidence reveals that during the course of investigation he had seized the documents from the ASCARD Bank and from other places, examined the witnesses and collected the specimen writings and signatures of the accused and suspects and thereafter he was transferred to another branch for which he had handed over the investigation to S.I. Sunirmal Roy. His evidence also reveals that vide Exhibit-2 he had seized some documents on 29.03.2001, and

vide Exhibit-26 he had seized some other documents on 30.03.2001 and vide Exhibit-25 he had seized some documents on 26.02.2001 and vide Exhibit-31 he had seized some documents from one Subrata Chakravarty, the then Branch Manager of SBI, Guwahati. His evidence also reveals that Exhibit-61 is the specimen signature of Md. Khalilur Rahman given as Atikur Rahman Hazarika, obtained by him and Exhibit-22 are the specimen signature of Atikur Rahman Hazarika obtained by him and Exhibit-1 is the specimen signature/hand writing of Md. Khalilur Rahman given as Atikur Rahman Hazarika, obtained by him and Exhibit 63 is the receipt/invoice of French Motor Car Company Pvt. Ltd. dated 13.02.96, standing in the name of Atikur Rahman Hazarika and Exhibit 64 is the quotation given by Kakati Engineering Works to Md. Atikur Rahman Hazarika for manufacturing body of the Truck and Exhibit-60 is the detailed voucher for acknowledgement of receipt of loan amount in the name of Atikur Rahman Hazarika and Exhibit- 57 is the forwarding letter along with Annexure 1 and 2 and 3, given by SP CBI to the GEQD, Kolkata and Exhibit-59 is the opinion of GEQD and Exhibit-65 and 66 are the FIRs registered by CBI and Exhibit 67 and 68 are two forwarding letters in RC Case No. 5/E/2001, Kolkata and R.C.6/E/2001, Kolkata and Exhibit-62 is the charge sheet.

10.14 It is elicited in cross-examination that in the FIRs lodged with the Paltan Bazar P.S., there was no allegation against Md. Khalilur Rahman. It is also elicited that he cannot say whether sanction was obtained or not before filing of charge sheet as he had not completed the investigation. It is also elicited that there is no mention in the charge sheet regarding the mode of payment or receipt of the payment thereof.

10.15 C.W.-1 Shri Liakat Hussain and C.W. -2 - Shri Binod Talukdar are the witness of seizure of documents by the I.O. from Abdul Ali Ahmed, Accounts Asstt., vide seizure list Exhibit-24, vide which the I.O. had seized (i) Breeze Loan ledger from 31.01.96 to 28.02.2001 (ii) Receipt Voucher payment to C.R. Roy (iii) Share Account Register (iv) Car Advance Register. Nothing tangible could be elicited in cross-examination of these two witnesses.

10.16 C.W.-3 Shri Prafulla Patowary is also a seizure witness. His evidence reveals that he had handed over some documents as per direction of his senior officer and the CBI personnel had seized the same vide Seizure List - Exhibit-26.

10.17 C.W.-4 - Shri Subrata Chakravarty is also a witness of seizure. His evidence reveals that vide seizure lists-Exhibit-31 the I.O. had seized some documents from him and vide seizure list - Exhibit-32 the I.O. had seized the account opening form of ASCARD Bank and vide seizure list-Exhibit-33 the I.O. had seized ledger sheet of Current Account No.10, and vide seizure list Exhibit 34-55 the I.O. had seized various correspondence made by the ASCARD Bank to SBI with regard to operation of account. Nothing tangible could be elicited in cross-examination of this witness.

11. From the evidence discussed above, specially from the evidence of P.W.3 and also from the Exhibit-7, the application form, Exhibit-8 the appraisal cum

pre-sanction report, Exhibit-9 the Surety Form submitted by Atikur Rahman Hazarika and Exhibit-10 the Salary Certificate of the accused/appellant and Exhibit-11 the Loan Sanctioned Order, Exhibit-12 the Loan Remittance Paper and Exhibit 13 and 14, the Deed of Guarantee and Exhibit-18 the Hypothecation Deed of Atikur Rahman Hazarika, that a loan of Rs. 6,08,000/ (Rupees Six Lacs Eight Thousand) was sanctioned in the name of Atikur Rahman Hazarika, the brother of the accused/appellant. Though the accused/appellant was being charged for obtaining loan by himself by impersonating his brother Atikur Rahman Hazarika and by forging his signatures, yet, there is no eye witness or direct evidence to establish that the appellant had impersonated himself as his brother Md. Atiqur Rahman Hazarika, and having forged his signature, he had availed the non farm sector loan. The learned counsel for the appellant has rightly pointed this out during argument. However, there is opinion of Handwriting Expert which leads to a conclusion that the appellant had put his signature as Md. Atiqur Rahman Hazarika. The opinion of GEQD, Exhibit-59 clearly stated about the same. But, the question is, in absence of any corroborative evidence, can the appellant be held guilty of the charges under section 419/420 IPC, solely on the basis of evidence of the Handwriting Expert.

12. It is the contention of the learned counsel for the accused/appellant that in absence of corroborative evidence, the opinion of Hand Writing Expert cannot be relied upon to convict the appellant. To support such a contention, reliance is placed upon the decision of Hon"ble Supreme Court in the case of Alamgir (supra). It is to be mentioned here that in the said case Hon"ble Supreme Court has held that:-

"..... There is no rule of law, nor any rule of prudence which has crystallized into a rule of law that opinion-evidence of a handwriting expert must never be acted upon, unless substantially corroborated. We feel it expedient to record our concurrence therewith, though, however, we hasten to add that since human judgment cannot be said to be totally infallible, due caution shall have to be exercised and the approach ought to be that of care and caution and it is only upon probe and examination the acceptability or creditworthiness of the same depends. The learned Sessions Judge as also the High Court did place, upon consideration of all relevant facts and material on record, reliance on the opinion of the handwriting expert and we do not see any reason to record a contra-finding....."

13. The learned counsel for the appellant also placed reliance upon a decision of a co-ordinate bench of this court in Subash Chandra Sharma (supra), wherein, discussing some decisions of Hon"ble Supreme Court in Sashi Kumar Banerjee & Ors. vs. Subodh Kumar Banerjee reported in AIR 1964 SC 529, and Magan Bihari Lal vs. The State of Punjab reported in AIR 1977 SC 1091 and State of Maharashtra vs. Sukhdeo Singh reported in AIR 1992 SC 2100, it has been held that there must be some substantive evidence to corroborate the evidence of Handwriting Expert to record a conviction.

14. There appears to be substance in the submission of learned counsel for the accused/appellant. And the ratio laid down in the case laws referred by him also supported his contention. Though Mr. Haloi, the learned Special Public Prosecutor for the respondent CBI, has submitted that even though there is no direct evidence, yet, following facts and circumstances are on the record to lead corroboration to the prosecution version which are [i] the duplicate copy of sale certificate i.e. Exhibit-3; [ii] fixed deposit voucher for Rs.10,000/- Exhibit-4, given by the appellant; [iii] that he was serving in the ASCARD Bank, Sivasagar Branch; [iv] that Md. Atiqur Rahman Hazarika, whose signature was forged by the appellant, was his own brother; [v] that specimen signatures of Khalilur Rahman and Atiqur Rahman were confirmed by the PW-1 and PW-2 and specimen signatures of Md. Atiqur Rahman Hazarika were confirmed by the PW-4 and PW-5, and these signatures were not disputed by the appellant, yet, this court is unable to record concurrence to the same because of the following reasons:-

Firstly, the prosecution side has not examined Md. Atiqur Rahman Hazarika as witness herein this case. Mr. Talukdar, the learned counsel for the accused/appellant has rightly submitted that the loan was purportedly taken by the appellant in the name of Md. Atiqur Rahman Hazarika, but the prosecution has failed to examine the said Md. Atiqur Rahman Hazarika as the prosecution witness and as the said witness has not been examined and as he was the material witness as his signatures were purportedly forged by the appellant, the said omission is fatal to the prosecution and presumption under Section 114[g] of the Evidence Act has to be drawn against the prosecution and without his examination conviction of the appellant under Section 419 of the IPC is not at all sustainable in law. Having considered the submission of Mr. Talukdar, in the light of given facts and circumstance on the record, I find sufficient force in the same. In a charge under section 419 IPC, where a person, namely, Md. Atiqur Rahman Hazarika, was allegedly impersonated by the accused/appellant, the person so impersonated is the best witness to establish the charge. But, having not examined him as witness, merely of the basis of report and evidence of Handwriting Expert it cannot be said that the charge stands established beyond all reasonable doubt.

And secondly, the circumstances relied upon by him, never lends any assurance to the opinion of Handwriting Expert. Moreover, the fixed deposit voucher for Rs.10,000/- Exhibit-4, though was allegedly recovered from the possession of the accused/appellant, was in the name of Md. Atiqur Rahman Hazarika. Mere recovery of the same from the possession of the accused/appellant would not justify drawing of an adverse presumption. Also merely because he the person impersonated, is the own brother of the appellant, cannot be a circumstance relevant against him. I have gone through the case laws Harpal Singh (supra) and Rajendra Kumar (supra) referred by Mr. Haloi in this regard. But, in the given facts and circumstances on the record it cannot be said that the ratios, laid down in the said cases, would advance the case of the respondent. Though such a presumption is held to be optional in the

case of Harpal Singh (supra) and there are facts and circumstances on the record to facilitate the drawing of such a presumption, and yet, the evidence on the record appears to be not sufficient to establish the charges against the accused/appellant under section 419/420 IPC, beyond all reasonable doubt.

15. I have gone through the decision of Hon"ble Supreme Court in the case of Murari Lal (supra) referred by Mr. Haloi, learned Special P.P. for the CBI and I find that in the said case also it has been held that :-

"But, the hazard in accepting the opinion of any expert, handwriting expert or any other kind of expert, is not because experts, in general, are unreliable witnesses — the quality of credibility or incredibility being one which an expert shares with all other witnesses — but because all human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion."

15.1 It has also been held that:-

"But, on the facts of a particular case, a court may require corroboration of a varying degree. There can be no hard and fast rule, but nothing will justify the rejection of the opinion of an expert supported by unchallenged reasons on the sole ground that it is not corroborated. The approach of a court while dealing with the opinion of a handwriting expert should be to proceed cautiously, probe the reasons for the opinion, consider all other relevant evidence and decide finally to accept or reject it."

16. In the instant case the Handwriting Expert - PW-11, has given the reasoned opinion and the same could not be dislodged in cross-examination. But, in the given facts and circumstances on the record I find it unsafe to place reliance upon his sole evidence, in absence of corroboration from independent circumstances, so as to return a finding that the prosecution side has succeeded in establishing the charge.

17. That, the evidence of P.W.-3 reveals that at the time of applying the breeze loan (non-firm sector loan case No.NSCAR/TME/HO/SRTO/ 121/96) in the name of his brother Atiqur Rahman Hazarika, the appellant was serving as Supervisor in the ASCARD Bank, Sivasagar Branch. And admittedly, the appellant stood as guarantor for a loan obtained in the name of his brother, Md. Atiqur Rahman Hazarika. There is no dispute that being an employee of the bank he was a „public servant". Now, what left to be seen is whether the appellant being a „public servant" can stand as guarantor for the loan, purportedly obtained in the name of his own brother and whether the same amounts to misconduct as defined in the Prevention of Corruption Act.

18. Section 13 of the Prevention of Corruption Act deals with criminal misconduct by a public servant. Sub-section (1) (d) provides that "A public servant is said to commit the offence of criminal misconduct - if he,-

- (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
- (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
- (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

19. In the case in hand admittedly, the appellant stood as guarantor for a loan obtained by his brother, Md. Atiqur Rahman Hazarika from the ASCARD Bank, where he was serving as Supervisor. Exhibit-13 is the Deed of Guarantee executed by him on 21st March 1996. Thus, by abusing his position as a public servant, he stood as guarantor to the non-firm sector loan availed in name of his brother, Atiqur Rahman Hazarika and thereby obtains for his brother a TATA 609 Truck, which is a valuable thing. Thus, a clear charge under Section 13[1][d] read with Section 13[2] of the P.C. Act, 1988 stands established against the appellant.

20. Admittedly, herein this case there was no prosecution sanction to prosecute the accused/appellant under section 19 of the P.C. Act. Mr. Talukdar, the learned counsel for the accused/appellant has rightly pointed this out. According to him the accused/appellant was serving as Supervisor of the ASCARD Bank and as such prosecution sanction was necessary and since there was no prosecution sanction the conviction of the accused/appellant is not sustainable. However, controverting this argument, Mr. Haloi, the learned counsel for the respondent CBI, submits that at the relevant point of time, i.e. at the time of filing charge sheet the appellant was not in service, and on such count sanction is not required. Mr. Haloi has referred to a decision of Hon"ble Supreme Court in the case of L. Narayana Swamy v. State of Karnataka & Ors., reported in (2016) 9 SCC 598 to bolster his submission. In the said case, it has been held that:-

"21. It is also made clear that where the public servant had abused the office which he held in the check-up period, but had ceased to hold "that office" or was holding a different office, then sanction would not be necessary. Likewise, where the alleged misconduct is in some different capacity than the one which is held at the time of taking cognizance, there will be no necessity to take the sanction."

21. It is to be noted here that at the time of hearing, a pointed query was put to the learned counsel of both the parties as to whether the appellant was in service or not at the time of filing the charge sheet and taking cognizance, it was answered by the learned counsel for the appellant obtaining necessary instruction submits that he was not in service. Mr. Haloi, the learned Special Public Prosecutor for the respondent CBI, referring to column No.5 of the charge sheet - Exhibit-62 submits that the appellant was an ex-employee at the time of filing of charge sheet. This being the admitted factual position, relying upon the ratio, laid down in the case of

L. Narayanswami (supra) it can safely be concluded that prosecution sanction is not required herein this case and on such count the submission of Mr. Talukdar, learned counsel for the accused/appellant cannot be accepted.

22. From the facts and circumstances discussed herein above, I find and hold that the prosecution side has failed to bring home the charges under section 419/420 IPC against the accused beyond all reasonable doubt. Accordingly, conviction and sentence under the said sections of law, stands set aside and quashed.

23. However, the conviction of sentence of the accused/appellant under sections Section 13[1][d] read with Section 13[2] of the P.C. Act, 1988 stands upheld as the prosecution side has succeeded in establishing the said charge against the accused/appellant beyond all reasonable doubt. Though the accused/appellant has taken a stand that the learned court below has failed to put the incriminating circumstances in the examination of the accused appellant, it has failed to give such instance at the time of hearing the appeal. Such a stand is also found to be unfounded when an endeavour was made to examine the evidence on the record and the examination of the accused under Section 313 Cr.P.C.

24. The learned court below has sentenced the accused/appellant to suffer RI for 2 years with fine of Rs. 5,000/- with default stipulation under Section 13(1)(d)/13(2) of the PC Act. In the given facts and circumstances on the record the sentence, so handed down, appears to be reasonable and justified, and as such, it requires no interference of this court.

25. In the result, the appeal stands allowed to the extent indicated above. Send down the record of the learned court below forthwith with a copy of this judgment and order. The accused/appellant shall surrender forthwith to serve out the sentence.