

Judicial Administration Training Institute
15, College Road, Dhaka
www.jati.gov.bd

**143rd Refresher Course for the Special Judges and District and Sessions Judges to be held
through Online/Distance Learning Process**

(November 22 – November 26, 2020)

Oral Presentation on Case Study

All participants will be divided into 06 (six) groups, where first 03 (three) groups consist of 08 (eight) members and the rest 03 (three) groups consist of 07(seven) members. Each of the group-members must take part in the presentation since each member will be evaluated on her/his individual performance and presentation skill.

Formation of the Groups

Name of the Group	Roll Number according to the serial number of GO	Assigned Case Study Number according to the Fact Sheet
A	01-08	1
B	09-16	2
C	17-24	3
D	25-31	4
E	32-38	5
F	39-45	6

[Instructions for the participants: 1) Read the problem carefully, 2) Identify the legal and factual issues in the given circumstances, 3) Do necessary studies to find out relevant statutes, books, commentaries and law reports, 4) Note down arguments for and against, 5) Form your opinion and decide the case, 6) Prepare your presentation in prescribed/standard form (specimen format is attached herewith), 7) Send the soft copy (pdf) of the same to research.publication.jati@gmail.com on or before 22/11/2020 to submit the same before the panel during the session. You may have to answer questions on the relevant issues, provisions of law and legal decisions. All participants shall be at liberty to join in the open discussion after presentation. Each Participant will be evaluated out of 50 marks on the criteria mentioned in Article 6 of the Training Evaluation Guidelines.

Fact Sheet For Oral Presentation on Case Study

1. Mr Kaisor-u-zzaman, Manager of the IFIC Bank Tuliker Branch, Sylhet lodged a First Information Report (FIR) with Kotwali Police Station on 18/11/2003 against Farid Uddin, Cashier of his Branch alleging, *inter alia*, that on 23/01/2003, he (Farid Uddin) as the Cashier of the Branch, received Taka 8,70,000 (eight lacs and seventy thousands) from Junaed Ahmed, the account holder of Saving Account No.3385 and issued receipt putting his signature and giving seal of the bank therein. On 17/11/2003, when the account holder came to the bank to withdraw Taka 50,000 (fifty thousand) from his account he found that the amount received by the Cashier on the previous date was not deposited to his account.

During preliminary investigation, it was found that Farid Uddin in collusion with Iqbal Uddin, Ahmed Chowdhury, Nasiruddin and Nasrin Chowdhury, officers of the same bank and informant Kaisor-u-zzaman received Taka 40, 00, 000 (forty lacs) in total from different account holders, including Taka 8,70,000 (eight lacs and seventy thousands) from Junaed Ahmed, which they deposited with their respective accounts. But the same had not been entered into the said accounts. However, a fresh FIR was lodged by Sabiur Rahaman, Sub Inspector of Kotwali Police Station on 17/12/2003 against all the 06 (six) persons, namely Kaisor-u-zzaman, Nasrin Chowdhury, Ahmed Chowdhury, Nasiruddin, Farid Uddin and Iqbq Uddin alleging that they jointly misappropriated the aforesaid money. Accordingly, Kotwali Police Station Case No.39 dated 17/12/2003 under sections 406/409/420 of Penal Code was registered and started against them.

After Investigation of the case, on 29/10/2004, another police officer submitted final report against 04 (four) accused namely Kaisor- u- zzaman, Nasrin Chowdhury, Ahmed Chowdhury, Nasiruddin and charge sheet recommending to proceed against only 02 (two) accused namely Farid Uddin and Iqbal Uddin.

On receipt of the police report, the magistrate sent the case record to the learned Senior Special Judge, Sylhet. Subsequently, on 12/03/2005, the learned Senior Special Judge took cognizance of the offences against 03 (three) accused persons namely Kaisor-u-zzaman, Farid Uddin and Iqbq Uddin under sections 406/409/420 of the Penal Code and discharged other 03 (three) accused persons namely Nasrin Chowdhury, Ahmed Chowdhury and Nasiruddin from the case and registered it as Special Case No. 1 of 2005.

Questions:

- (a) *Are the provisions of the Durniti Daman Commission Ain, 2004 applicable to the investigation of the Special Case though the FIR was lodged on 17/12/2003, prior to the enactment of the said Ain? Give reasons for your answer.*
- (b) *Whether the investigation of the case by the police was legal after Durniti Daman Commission Ain, 2004, came into force on 9th day of May, 2004 and whether the learned Senior Special Judge acted within Jurisdiction in taking cognizance of the offences on the basis of such police report.*

2. On 10/12/1987 at about 4.00 pm in the afternoon Abul Kalam went to the Hatirdanga Haat. His younger brother Abdus Salam also went to the same haat at about 5 p.m. and met his elder brother (Kalam) there accompanied by two other co-villagers namely Rahim Uddin and Jamal Uddin. In conversation with his elder brother, Salam came to know that on the previous day Kalam met the said Rahim Uddin and Jamal Uddin in the house of Kea Mondol where he had gone for thrashing paddy and on their request he came to the haat with them as planned. After completing his marketing Salam returned from the haat at about 8 p.m. and came to know from the wife of Kalam that he (Kalam) had not returned home. Then after some time, he with his cousin Helal, went to the said Hatirdanga Haat again in search of Kalam. When Kalam was not available in the haat, they went to the house of Rahim Uddin and asked him of the whereabouts of Kalam. On query Rahim disclosed that he had some talk with Kalam in the haat but after the talk was over he left the place. Salam went to different places in search of his brother but could not find him out.

Few days later, Kalam met Azimunnesa on his way to the said haat and she stated that on 10/12/1987, in the night, she heard groaning sound from the hut of Rahim and on the following day *i.e.* on 11/12/1987 also, she heard Abdus Satter and Tamiruddin shouting at each other when Tamiruddin was asking Satter to keep quiet in the matter.

On 25/12/1987 at about 9 O' Clock in the morning, Salam heard that a dead body was floating in the Padda Pukur within village Beniadhur. He then rushed to the village and with the help of the villagers recovered the dead body and found the same to be of his brother Abul Kalam.

Salam lodged FIR alleging that Rahim, Jamal, Bishu, Khalek, Razzak, Sattar with the help of 03 (three) other accused persons called his brother away from Hatirdanga haat and killed him. During investigation accused Abdur Rahim made confessional statement under section 164 of the Code of Criminal Procedure before the learned Magistrate and gave in details the description of the occurrence.

After the investigation, charge sheet was submitted against all the 09 (nine) accused persons under sections 302/201/114/34 of the Penal Code. On receipt of the charge sheet the learned Magistrate took cognizance and then sent the case records to the learned Sessions Judge who also took cognizance against all the accused. Accordingly, charge was framed against all of them under sections 302/201/114/34 of the Penal Code to which they all pleaded not guilty.

During trial, the prosecution examined in all 10 (ten) PWs including the doctor who held the post mortem examination on the dead body of the deceased Abul Kalam and the Investigation Officer. The learned Magistrate who recorded the confession could not be produced before the court as a witness.

The defense did not produce any witness but from the trend of the cross examination of the PWs their case appears to be that they were innocent but were falsely implicated in the case out of grudge and that the alleged confessional statement of Abdur Rahim was obtained by

intimidation and torture and hence the same were neither voluntary nor true. They also contended that since the learned Magistrate recording the confessional statement was not examined, the confessional statements cannot be admitted into evidence.

Question:

Whether a confessional statement of the accused is admissible in evidence without examining the recording Magistrate. What would be its evidentiary value?

3. The Tahshildar-in-Charge of Majenpur Tahsil Office misappropriated Tk. 77,978.25/- (seventy-seven thousand nine hundred seventy-eight taka and twenty five paisa) by showing less collection from the tenants from whom he was authorised person for collecting rent by granting government rent receipts. On this allegation, the local Anti-Corruption Bureau inquired into the matter and after verifying the allegation of misappropriation, lodged First Information Report at Kushtia Police Station and they took up the investigation. After investigation, charge-sheet was submitted for commission of offences under section 409 of the Penal Code, 1860 read with section 5 (2) of the Prevention of Corruption Act, 1947. When the case record was transmitted to the learned Divisional Special Judge, Khulna, cognizance was taken and he also framed charge against the accused under section 409 of the Penal Code read with section 5 (2) of the Prevention of Corruption Act, 1947. The charge was read over to the accused to which he pleaded not guilty and claimed to be tried. The learned Divisional Special Judge recorded evidence of several witnesses and at one stage of trial, on 17.11.1999 the prosecution filed an application for splitting up the charge and the record since the offences took place on different dates covering a period of more than one year. Keeping in view the provision of section 234 (1) of the Cr.P.C., learned Divisional Special Judge allowed the application and split up the charges into three parts, each covering a period of less than one year and case records were separated accordingly for separate trial.

After recasting the charge, it was read over and explained to the accused in three splitted cases, who pleaded not guilty and claimed to be tried. The learned Divisional Special Judge resumed the trial, and on the same date an additional witness was examined on behalf of the prosecution and the accused was examined under section 342 of the Code when he claimed to be innocent and expressed his intention to call defense witness. Date was fixed on 23.11.1999 for defense witness, but no summons could be issued as list of defense witness was not supplied. Subsequently after hearing argument, the accused was convicted under section 409 of the Penal Code, 1860 and sentenced to suffer rigorous imprisonment for one year for each particular period. Separate sentence was also passed under section 5(2) of the Prevention of Corruption Act, 1947.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence the accused preferred Criminal Appeal No.2907 of 1999 before the High Court Division with

prayer for the acquittal of the accused mainly on the ground of defect in framing of charge and also contended that he has paid back all the money which he is alleged to have defalcated.

Questions:

- (a) *As a general principle of law whether the trial court can alter charge during trial. Can the Court proceed with the trial, even on the day of amending the charge or adding any new charge?*
 - (b) *As a Special Judge, would you split up the case records and charges into three as contemplated under Section 234(1) of the Code of Criminal Procedure? Whether your decision regarding the splitting up of records and charges would be different if you were a Session Judge. Explain with reasons.*
 - (c) *Do you think that an accused can be acquitted on the ground of defect in framing of charge?*
 - (d) *Is the fact of paying back all the misappropriated money by the accused during the pendency of case, can be a ground for his acquittal?*
4. A complaint was filed in the Court of Chief Metropolitan Magistrate, Chattogram on the allegation of dishonor of a cheque and non-payment of cheque money on demand. The Magistrate forwarded the said complaint to Kotwali Police Station where it was registered as Kotwali Police Station Case No. 20(7)06 dated 13/07/2006. On conclusion of investigation, police submitted two charge sheets on 28.11.2006; one under sections 406/420/109 of the Penal Code, 1860 and another under section 138 of the Negotiable Instrument Act, 1881. On receipt of said 02 (two) charge sheets, the Magistrate split up the proceedings into two, one under section 138 of the Negotiable Instrument Act and the other under sections 406/420/109 of the Penal Code, in connection with the self-same G.R. Case No. 490 of 2006, arising out of Kotowali Police Station Case No. 20(7)06.

Being aggrieved by these two proceedings on the self-same facts the accused preferred an application under section 561A of the Code of Criminal Procedure, 1898 for quashment of the proceeding under sections 406/420/109 of the Penal Code, 1860 and obtained Rule in that case on the ground of double jeopardy.

It is submitted on behalf of the accused-petitioner that since special provisions are available under section 138 of the Negotiable Instrument Act for dishonoring a cheque by the bank, a separate criminal proceeding for the self-same facts and cause of action showing offences under sections 406/420/109 of the Penal Code, 1860 is nothing but an abuse of the process of the court. So, the second criminal proceeding under section 406/420/109 of the Penal Code is liable to be quashed on the ground of double jeopardy.

Question:

Is the question of double jeopardy as claimed by the accused tenable? Whether the Magistrate can pass sentence in both the cases separately if the offences are proved?

5. One Mishon Chandra along with 09 (nine) other persons were charged under sections 302/34 of the Penal Code for killing Md. Shukur Ali, in front of a saw mill near Kalibari, Rajshahi. Mishon Chandra gave confessional statement under section 164 of the Code of Criminal Procedure, 1898 stating that he along with other accused persons were present at the time of occurrence, but he was merely standing as a guard while the others dealt the fatal blows which led to the death of the deceased Md. Shukur Ali. He also confessed that he took part in the jubilation of the death of the deceased victim with other accused.

During trial the prosecution examined 19 (nineteen) witnesses including the doctor who had conducted the post-mortem examination. The doctor-witness deposed that there were several injuries on the person of the deceased and his death was caused due to shock and hemorrhage resulting from those injuries. There was no eye-witness to the occurrence. The confessional statement was proved to be true and voluntary.

After hearing the parties and considering the evidence and materials on record, the Trial Court convicted accused Mishon and two others under section 302/34 of the Penal Code, 1860 and sentenced them to suffer imprisonment for life and also to pay fine of taka 20,000 (twenty thousand), in default, to suffer imprisonment for one year. Let it be mentioned here that there were circumstantial evidence against the two other accused persons to implicate them with the offence.

Convict Mishon thereafter preferred appeal to the High Court Division contending that his confessional statement was exculpatory in nature and that he had no intention to kill the deceased victim. Therefore, his statement made under section 164 of the Cr.P.C. cannot be the basis of his conviction.

Questions:

- (a) *What is the nature of the statement made by accused Mishon under section 164 of the Code of Criminal Procedure? Whether it can be the sole basis of proving guilt of the accused Mishon. Whether exculpatory statement made under section 164 Cr.P.C needs further corroborating evidence to find guilt of the accused.*
 - (b) *Can the other non-confessing accused persons be convicted on the basis of the confession of co-accused Mishon if there is no other corroborating evidence against them?*
 - (c) *Whether the accused Mishon Chandra had common intention in committing murder of Shukur Ali as per his statement made under section 164 of the Cr.P.C.*
6. Informant Md. Rahimuddin, father of the victim Ranjina Begum lodged an ejahar stating inter alia, that Ranjina Begum was given in marriage to the accused Anarul @Anarul Huq on 12.11.99. After their marriage the accused Anarul along with other accused demanded dowry from Ranjina Begum which she could not meet. As a result, Ranjina Begum was driven out

from the house of the accused persons. There was a salish over the matter in presence of the local Union Parishad Chairman. According to the advice of the Chairman victim Ranjina Begum was sent back to the house of the accused persons. On 26.02.2002 the informant, father of the victim Ranjina Begum heard from the local people that a body of a woman was lying by the railway lines. After hearing the same the informant and his relatives went there and saw the dead body of the victim Ranjina with injuries on her person. The informant came to know that the accused Anarul with the help of other accused persons killed his daughter for dowry and left the dead body by the side of the railway.

After investigation Police submitted charge sheet against the accused persons under section 11 (ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000. The accused persons pleaded not guilty.

After framing the charge against the accused under section 11 (ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000, 08 (eight) PWs were examined on behalf of the prosecution. On the other hand, none was examined on behalf of the defence and the accused has taken a plea that the victim died of sudden pain in chest. The accused pleaded not guilty at the time of his examination under section 342 of the Code of Criminal Procedure.

The informant Rahim Uddin as PW-1, father of the victim stated in his examination-in-chief that his daughter was sent back to his house after assaulting her on demand of dowry and after settlement of the matter by the local chairman he sent his daughter to the house of the accused and after a few days he found his daughter dead following severe torture and his evidence was corroborated by the other witnesses. PW-7 Dr Farhad Alam proved the post mortem report showing 12 (twelve) injuries and 8 (eight) hematomas on the head and legs. The Medical Board opined that all those injuries were caused by blunt weapons and Board also opined that death was caused due to haemorrhage and shock as a result of the above mentioned injuries which were ante-mortem in nature.

It was proved by the prosecution beyond doubt that Ranjina was killed by her husband (accused Anarul) because Ranjina was living with her husband just before her death. But it transpires from the evidence that the prosecution has totally failed to prove the demand of dowry by the accused husband at the time of causing death of the victim Ranjina. However, the Nari-o-Shishu Nirjatan Daman Tribunal by the judgment and order dated 16.3.2002 convicted the accused Anarul @ Anarul Huq under section 11 (ka) of the Nari-o-Shishu Nirjatan Daman Ain 2000 and sentenced him to death.

Questions:

- (a) *Though it appears that the prosecution has failed to prove demand of dowry by the accused at the time of causing death of the victim Ranjina, do you support the sentence passed by the Tribunal under section 11 (ka) of the Nari-o-Shishu Nirjatan Daman Ain 2000?*
- (b) *Since the fact of demand of dowry was not proved, is there any scope for the Nari-o-Shishu Nirjatan Daman Tribunal to impose penalty only under section 302 of the Penal Code?*

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Oral Presentation on Case Study
Case Study Number:

Submitted by:

Group Name- A/B/C/D/E/F

Names of the Group Members:

Designations:

Roll Numbers:

Submitted to:

Course Director

143rd Refresher Course for the Special Judges and District and Sessions Judges to be held
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And

Director (Training)

JATI

Short Facts:

(Brevity is an art. Please maintain that by stemming and striking unnecessary fact. Be brief and specific as far as practicable)

Question to be decided:

(Specific question given)

Relevant laws:

The case involves following laws.....

Decision: (with main reasoning)

Reasoning:

(Analysis of the facts, analysis of the law, argument for and against, decision relied)

Reference: (case laws by the AD)

(Case laws by the HCD)

Name & signature of the trainee judge