

Judicial Administration Training Institute
15, College Road, Dhaka
E-mail: Jatidak@yahoo.com

**7th Orientation Course for the Newly Posted/Promoted Chief Judicial
Magistrate/Additional District & Sessions Judges and equivalent Judicial Officers to be
held through Online/Distance Learning Process
(March 21 – March 25, 2021)**

Oral Presentation on Case Study

All participants will be divided into 09 (nine) groups, each consisting of 05 (five) 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 | 01-05 | 1 |
| B | 06-10 | 2 |
| C | 11-15 | 3 |
| D | 16-20 | 4 |
| E | 21-25 | 5 |
| F | 26-30 | 6 |
| G | 31-35 | 7 |
| H | 36-40 | 8 |
| I | 41-45 | 9 |

[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 March 22, 2021 (within 10 a.m.) 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. An Assistant Director of ACC, Dhaka lodged an FIR with the Motijheel police station against three accused namely Wahidul Haque, Abu Hena, Saiful Haque and four others under sections 409/420/109 the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947 and section 4(2) and (3) of the Money Laundering Prevention Act, 2012, alleging, *inter alia*, that during the period from 1st September, 2013 to February, 2014, the accused Wahidul Haque and Abu Hena, in connivance with the other co-accused persons, remitted US \$ 20.025 million equivalent to BDT 165 crore from AB Bank Limited, Offshore Banking Unit (OBU), EPZ, Chattogram to the Account No. AE800030010094519124001 of Cheng Bao General Trading LLC of Abu Dhabi Commercial Bank Limited in Dubai under an agreement with the so-called Pinnacle Global Fund (PGF) and embezzled the amount therefrom. It is further alleged that the accused M.Wahidul Haque is the former Chairman of AB Bank Limited and Abu Hena Mostafa Kamal is the Head of Corporate Treasury of AB Bank Limited. After lodgement of the FIR 3 above-named accused were arrested by the Investigating Agency (ACC) and forwarded to the Chief Metropolitan Magistrate, Dhaka with a prayer for remand on 25.01.2018. On the same day, the Metropolitan Magistrate, Court No. 25, Dhaka, after hearing both the prosecution and the defence, granted bail to the accused Wahidul Haque and Abu Hena, and allowed the prayer for remand of the co-accused Saiful Haque.

Question:

Do you think that the Metropolitan Magistrate was legally justified in granting bail to the accused Wahidul Haque and Abu Hena in view of the facts and circumstances of the present case? In this connection discuss whether the Metropolitan or Judicial magistracy has got any power to entertain a bail in a case instituted under the Money Laundering Prevention Act, 2012 or any other special law before taking cognizance of the offence which is exclusively triable by a Special Judge.

2. On 10/12/1987 at about 4.00 p.m. 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 shopping Salam returned from the *haat* at about 8.00 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, 1898 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. "X" issued a cheque for advance payment of a sum of taka 1 crore to "A" on condition that he ("A") would sell a property of "X" as per market value and if he was able to sell the same, he would be entitled to get a percentage of consideration of the property sold in view of such act. The cheque was issued pursuant to a written agreement dated 13/03/2012. When "A" presented the cheque in the bank for encashment, it was dishonored by the bank with the endorsement "payment stopped by the drawer". Thereafter, "A" served notices upon "X" requesting him to pay the cheque amount who received the same but he did not

pay any amount. Consequently, “A” observing all legal formalities as contemplated under the Negotiable Instrument Act, 1881 had filed a Complaint Case against “X”.

It is found that all legal formalities to bring the act of the accused “X” within the mischief of sections 138 and 141 of the Negotiable Instrument Act, 1881 were duly observed. However, the defense case was that the condition under which the cheque was issued had not been complied with by the complainant. Thus, he instructed the bank to stop the payment of the cheque. Accordingly, the bank returned the cheque with the said endorsement.

Factual aspect discloses that accused himself managed to sale the property under agreement to the American Embassy and at the time of discussion, execution and registration of the sale deed, “A” admittedly was not present there. The complainant did not help the accused in any way in that regard. Even, there is no such averment in the petition or in the evidence that the complainant has stated that he had brought any purchaser who offered market price of the property. So, the condition under which the cheque was issued was not fulfilled by the complainant.

Question:

Under the aforesaid facts and circumstances of the case, can the accused “X” be convicted and sentenced for committing an offence punishable under section 138 of the Negotiable Instrument Act, 1881?

4. On 07/04/1989 the victim of the occurrence Abdur Rab Master, headmaster of Maligaon Primary School, had been to a far-off village after Jumma prayer for bringing medicine for his wife (PW 3). The headmaster was accompanied by his friend (PW2) Muslim Routh. On their way back home at about 8.30 pm, and as they reached the field of Ragoir Beel, Shahrasti, 10/12 miscreants armed with *dao*, *chenni*, *kirich* etc, attached them. Muslim Routh having received *dao* injury given by accused Babul and Dulal ran towards nearby village, took shelter in the house of one Akkas Mia and raised hue and cry. Abdur Rab Master was assaulted and dragged towards the middle of the Ragoir Beel. On hearing the alarm of Muslim Routh the neighbouring people came to the house of Akkas Miah and heard about the occurrence and recognition of the miscreants from Muslim Routh. They rushed to the place of occurrence and found the beheaded dead-body of Abdur Rab Master in the field of Ragoir Beel. After being informed of the news from his cousin, the younger brother of the deceased lodged an FIR.

It was alleged that the deceased Abdur Rab Master and Muslim Routh used to resist the criminal acts of the accused persons, that before the occurrence the deceased had beaten accused Munir and Ledu for their criminal acts and that the accused persons being revengeful had committed the murder.

During the investigation, accused Munir and Ledu made confessional statements.

The evidence was recorded in the presence of the accused. However, the Sessions Judge did not mention anything about the confessional statements at the time of examination of the accused under section 342 CrPC. But, the accused persons stated that the confessions

were obtained from them by the Police by torture and inducement. Such allegation was not substantiated, as there was absolutely no material on record to prove the allegation of police torture or inducement.

The Sessions Judge based the order of conviction upon the ocular evidence of Muslim Routh, recovery of 3 *chenni* and a knife from the tank of accused Munir and the judicial confession made by the accused Munir and Ledu.

In death reference and connected appeals, the HCD took notice of the recoveries made and relied mainly upon the confessional statement of the accused persons. The HCD came to the conclusion that the said confessional statements were true and voluntary.

It was argued on behalf of the accused that during examination of the accused persons under section 342 of the Code of Criminal Procedure the confessional statements, which were the main evidence in the case, were not specifically mentioned in the summary of evidence and attention of the accused persons was not drawn thereto and as such the accused have been prejudiced.

Question:

Does omission to specifically draw attention of the accused persons to the confessional statements during examination under section 342 CrPC always cause prejudice?

5. “A” filed a suit for specific performance of contract alleging that “B” entered into a contract with him for sale of the suit land and after receiving advance of Tk. 2,00,000/- executed a *bainapatra* on 10/05/2014 and ultimately refused to execute and register a sale deed in his favour. “B” contested the suit mainly contending that the *baniapatra* was false and he neither entered into any contract with “A” nor received any amount from him as advance. The plaintiff led oral evidence and proved the contract and payment of advance. The defendant though denied execution of the *bainapatra* did not take any step for examining the signature in the *bainapatra* by a handwriting expert. The court did not itself also compare the signatures. However, the suit was decreed.

Then an appeal was filed by the defendant taking the main ground that without ascertaining the genuineness of the signature in the *bainapatra*, the court should not have decreed the suit.

It was argued on behalf of the appellant that the suit should be sent back to the trial court on remand for ascertaining the genuineness of the signature either by comparing the signatures by the court itself or through expert examination.

Question:

In view of such argument, if the appeal is before you, will you send back the suit on remand or decide the appeal on merit? Give reasons.

6. In a case the prosecution examined five witnesses who were cross-examined from the side of the accused persons but at the time of cross-examination attention of none of the witnesses were drawn to any contradictions regarding their statements made before the I.O.

under Section 161 of the Code of Criminal Procedure and their statements made in the court at the time of their examination at the trial stage.

At the time of argument, it has been argued on behalf of the accused persons that the I.O. of the case not being examined as a witness, the prosecution case cannot be believed and the accused persons cannot be convicted in the absence of the evidence of the I.O. who held the investigation and submitted charge sheet.

Question:

Do you think that the prosecution case fails if the investigation officer does not turn up in the court for examination?

7. On the basis of a secret information, the informant with his police force rushed to the place of occurrence at 10:00 a.m. and came to know that two groups were ready to fight with each other and for that reason the accused-persons were organized with arms. On searching the house of the accused persons, the informant recovered 2 *Soras* 2'-02" long with wooden barrel, 2 *ram daos*, one of which was 2'-9" long with barrel and another was 3'-11" long with barrel and 3 *Falas* (Bollom) each 8 cubits long, in presence of the seizure list witnesses. Thereafter the informant made seizure list of alleged articles and obtained signature of witnesses and came back to police station, thus P.S. Case under section 19(f) of the Arms Act, 1878 was started.

The case was investigated by the police. After investigation the police found prima-facie case against the accused persons and submitted charge sheet under section 19(f) of the Arms Act, 1878 and the case record was transmitted to the Special Tribunal Case No. 1, Sirajgonj, for trial and the case was registered as Special Tribunal Case No. 27 of 2009. After observing all the legal formalities, the trial court fixed 03/11/2009 for charge hearing. On that day, the accused persons filed an application under section 241A of the Code of Criminal Procedure, 1898 for discharging them from the case, but the learned Judge of the Special Tribunal rejected that application and framed charge against the accused persons under section 19(f) of the Arms Act, 1878.

Question:

Whether the framing of charge under section 19(f) of the Arms Act, 1878 is legal or not.

8. On 01/11/2016 Mohammad Ali Mia lodged a complaint against Rajab Ali and five other persons in the Senior Judicial Magistrate Court No 5, Dhaka under Section 379 of the Penal Code. Mohammad Ali Mia alleged that he constructed a *Baithakkhana* adjacent to the south of his homestead on the land belonging to him but Rajab Ali forcibly demolished those against his wishes and took away the structures belonging to him and out of his possession without his consent causing loss of Tk. 20,000/- thereby committing an offence under Section 379 of the Penal Code. The learned Magistrate took cognizance under section 379

of the Penal Code. After completion of the trial learned Judicial Magistrate by his judgment and order dated 9/4/2017 found the accused Rajab Ali and others guilty for committing theft punishable under section 379 of the Penal Code, convicted and sentenced them thereunder to suffer rigorous imprisonment for 15 days each and to a fine of Taka 500 each in default imprisonment for 4 days more each. Rajab Ali and other convicted persons preferred an appeal to the Chief Judicial Magistrate contending that the conviction and sentence as passed by the learned Judicial Magistrate was bad in law because the same was without jurisdiction

Questions:

- a) *Can a Magistrate take cognizance of an offence of theft where value of the stolen property amounts to Tk. 20000/-?*
- b) *How the Magistrate should deal with the petition of complaint when the offence alleged of is triable by the Village Court under 1st part of the schedule to the গ্রাম আদালত আইন, ২০০৬?*

9. Sharifa was the maid servant of housewife Rubina, whereas Samad used to work as a servant of Md. Harun-or-Rashid who was a tenant of third floor flat of the same building. Rubina having been aware of love affairs of Samad and Sharifa used to beat Sharifa and ultimately, drove her out of her flat which made Sharifa gravely infuriated and anger flared up in the mind of Sharifa. Sharifa left Dhaka and went to her village in Shirajganj. As Samad became mad to marry Sharifa, he also went to Sirajganj, where he met Sharifa and proposed her to marry him. But Sharifa accorded her consent to marry Samad on condition that Samad should kill Rubina. Accordingly, Samad came back to Dhaka leaving Sharifa in her village. Thereafter he met Arif and Emdad who were Guards (*Darwans*) of the building where Rubina resides and they agreed to come in aid of Samad to kill Rubina on being allured of payment of Tk. 20,000/- . Subsequently housewife Rubina Akhter was callously butchered in bathroom of her flat by grievous injuries, twenty-four (24) in number in the night between 28/5/1998 and 29/5/1998. Her death followed instantaneously. Following commission of ghastly crime, First Information Report was lodged by one Md. Jafar Imam as Informant with Motijheel Police Station, Dhaka and the same was registered as Motijheel Police Station Case No. 161 dated 29/5/1998.

During investigation Samad, Sharifa, Arif and Emdad were depicted as perpetrators of crime and they were arrested by police. Accused Samad made extra-judicial confession wherein he confessed that he, at instigation and persuasion of Sharifa with assistance of accused Arif and Emdad killed Rubina. In his confession he further stated that on the basis of agreement with his paramour Sharifa he kept Emdad on guard at the stair and took Arif to the flat of Rubina and he killed Rubina on laying strikes on her body with a *boti*. On completion of investigation, police submitted charge-sheet against all the four accused persons.

Trial Court framed charge against accused Samad under section 302 and against the three other accused namely Sharifa, Arif and Emdad for offences under section 302/34 of the

Penal Code. Later, evidence came forth in respect of commission of offence under section 302/109 of the Penal Code. Accordingly, Trial Court found Samad guilty of offence under section 302 and accused Sharifa, Arif and Emdad guilty of offence under section 302/109 PC and convicted and sentenced them accordingly.

Question:

Under the facts and circumstances of the present case, if charge is framed in one section can the accused persons be convicted on another section?

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

**7th Orientation Course for the Newly Posted/Promoted Chief Judicial
Magistrate/Additional District & Sessions Judges and equivalent Judicial Officers to be
held through Online/Distance Learning Process
(March 21 – March 25, 2021)**

Oral Presentation on Case Study
Case Study Number:

Submitted by:

Group Name- A/B/C/D.....

Names of the Group Members:

Designations:

Roll Numbers:

Submitted to:

Mr. Md Golam Kibria (Senior District Judge)

Course Director,

7th Orientation Course for the Newly Posted/Promoted Chief Judicial Magistrate/Additional
District & Sessions Judges and equivalent Judicial Officers to be held through
Online/Distance Learning Process

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