

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 6830 of 2017

Md. Rafique Ahmed

...Convict-appellant

-Versus-

The State and another

...Respondents

Mr. Abdus Salam Mamun, Advocate with

Mr. Shajada Akter Bakul, Advocate with

Mr. Ahsanul Hoque (Liton), Advocate

...For the convict-appellant

Mr. S.M. Golam Mostofa Tara, D.A.G with

Mr. A. Monnan, A.A.G

...For the State

Ms. Quamrun Nessa, Advocate

...For the respondent No. 2,

Anti-Corruption Commission

Heard on 18.02.2024, 08.05.2024 and 09.05.2024

Judgment delivered on 12.05.2024

This criminal appeal under Section 10 of the Criminal Law Amendment Act, 1958 is directed against the impugned judgment and order dated 04.06.2017 passed by Divisional Special Judge, Chattogram in Special Case No. 18 of 2012 convicting the appellant under Section 409 of the Penal Code, 1860 read with Section 5(2) of the Prevention of Corruption Act, 1947 and sentencing him under Section 409 of the Penal Code, 1860 to suffer rigorous imprisonment for 03(three) years and fine of Tk. 10,000, in default, to suffer rigorous imprisonment for 06(six) months and confiscating the misappropriated amount Tk. 1,51,530 in favour of the state and directing to recover the said amount by selling the property of the appellant.

The prosecution case, in a nutshell, is that the accused Md. Rafique Ahmed was the Deputy Manager, Sales, Jibon Bima Corporation, Chattogram. He received total Tk. 1,51,530 on different dates from 30.12.1993 to 31.12.1994 from the policyholders (1) Syedul Haque, Insurance Policy No. 1046274-5, (2) Rehena Begum, Insurance

Policy No. 1018273-1, (3) A.K.M. Sarwar, Insurance Policy No. 1029654-1 and (4) Md. Azizur Rahman, Insurance Policy Nos. 1019329-0, 1048409-5, 1019330-8, 3103837-5 and 3100329-6 and issued money receipts in favour of the said policyholders. He did not deposit the said amount against said policies and misappropriated. A departmental enquiry was held regarding the said misappropriation. After departmental enquiry, the accused was found guilty of misconduct and dismissed from service. P.W. 3 Md. Aminur Rahman, Assistant Director, Anti-Corruption Commission, Jessore after the enquiry found the prima-facie truth of the allegation of misappropriation and lodged the FIR on 25.07.2004 with Kotwali Thana, Chattogram under Section 409 of the Penal Code, 1860 read with Section 5(2) of the Prevention of Corruption Act, 1947 against the accused Md. Rafique Ahmed.

D.W. 3 Md. Aminur Rahman was appointed as Investigating Officer on 07.08.2004. He investigated the case from 07.08.2004 to 08.10.2004. Thereafter, the Bureau of Anti-Corruption was abolished. After that, the Anti-Corruption Commission by office memo dated 14.07.2009 appointed P.W. 8 Md. Safiqur Rahman Bhuiyan as Investigating Officer and subsequently P.W. 11 Samsuddin Ahammed was appointed as Investigating Officer by memo dated 23.11.2009. Again P.W. 12 Md. Manirul Islam was appointed as Investigating Officer and after completing the investigation, he submitted charge sheet on 25.11.2010 against the accused under Section 409 of the Penal Code, 1860 read with Section 5(2) of the Prevention of Corruption Act, 1947.

After that, the case record was sent to the Senior Special Judge, Chattogram and cognizance was taken against the accused under Section 409 of the Penal Code, 1860 read with Section 5(2) of the Prevention of Corruption Act, 1947 and the case was sent to the Divisional Special Judge, Chattogram for trial. During the trial, charge

was framed against the accused under Section 409 of the Penal Code, 1860 read with Section 5(2) of the Prevention of Corruption Act, 1947 which was read over and explained to him and he pleaded not guilty to the charge and claimed to be tried following the law. During the trial, the prosecution examined 12(twelve) witnesses to prove the charge against the accused. After examination of the prosecution witnesses, the accused was examined under Section 342 of the Code of Criminal Procedure, 1898 and he declined to adduce any D.W. After concluding the trial, the trial Court by impugned judgment and order convicted the accused and sentenced him as stated above against which he filed the instant appeal.

P.W. 1 Md. Ali Hossain stated that in 1999 he joined as Assistant Manager, Law Division, Jibon Bima Corporation. The occurrence took place between 1993 to 2003. The accused Rafique Ahmed was the Deputy Manager (Sales), Jibon Bima Corporation. From 30.12.1993 to 31.12.1994, he received total Tk. 1,51,530 as premium from the four policyholders Syedul Haque, Rehana Begum, Sarwar and Azizur and issued the money receipts. The accused received the said amount but did not deposit the realized amount in the account of the said policyholders. A departmental case was initiated against the accused. He conducted the departmental inquiry and the accused was found guilty and dismissed from service. During cross-examination, he stated that a departmental case was initiated in 2003. Abdus Salam Sarder was the Enquiry Officer of the departmental case. He could not say whether the policyholder Syedul Haque was examined in the departmental case. At the time of the departmental proceeding, the accused was in service. He admitted that in the absence of accused Rafique Ahmed, the departmental proceeding was initiated and disposed of. Sarwar Ahmed was the complainant of the departmental case. He was a policyholder. He denied the suggestion that in the departmental case, no opportunity was given to defend the

accused and that he submitted the report without the statement of the policyholder.

P.W. 2 Md. Manjurul Islam was the Assistant Manager, Administration, Jibon Bima Corporation, Head Office on 20.04.2004. The records of the departmental case initiated against the accused Rafique, the record of departmental enquiry, (109 pages) and the note sheet (27 pages) were seized and he took custody of those documents. He did not produce those documents in Court. Subsequently, on 09.01.2013 he produced the records of the departmental case (27 pages) and proved the jimmanama as exhibit 1 and his signature as exhibit 1/1. He proved the seized documents as exhibit 2. He denied the suggestion that the accused served in the department with a good reputation. He admitted that possibly in 1999 or 2000, he came to know about the irregularity against the accused. The premium was received by the accused. He affirmed that the premium was not misappropriated. He could not say whether the concerned policyholder stated swearing affidavit.

P.W. 3 Md. Aminur Rahman stated that from 16.01.2004-2006, he discharged his duty as Inspector of the Bureau of Anti-Corruption, Head Office, Dhaka. He was appointed as Enquiry Officer to enquire the Complaint No. 87/03 (Taskforce-1) on 12.02.2004. On 20.04.2004 at 12.30 pm, he seized documents from the Office of the Jibon Bima and Manjurul Islam presented the records. He proved the seizure list as exhibit 3 and his signature as exhibit 3/1. He handed over the documents to the custody of Manjurul Islam. During the enquiry, he found the truth of the misappropriation of total Tk. 7,08,238/50 and submitted the report requesting to lodge the FIR for each year. From 30.12.1994 to 31.12.1994, the accused misappropriated total Tk. 1,51,530. He proved the FIR as exhibit 4 and his signature as exhibit 4/1. He partly investigated the case. During the investigation on 04.10.2004, he seized five items of documents. He proved the seizure

list as exhibit 5 and his signature as exhibit 5/1. On 04.10.2004 at 4.00 pm, he seized the documents from Ahmad Sagir and prepared the seizure list. He proved the seizure list as exhibit 6 and his signature as exhibit 6/1. On 06.10.2004, he seized documents from Ahmad Sagir. He proved the seizure list as exhibit 7 and his signature as exhibit 7/1. On 08.10.2004 he seized two set of documents from A.K. Sarwar. He proved the seizure list as exhibit 8 and his signature as exhibit 8/1 and handed over the documents to the subsequent Investigating Officer. Since the Bureau of Anti-Corruption was abolished, the investigation remained pending. After reconstitution of the Anti-Corruption Commission, he handed over the documents to the Investigating Officer. During cross-examination, he stated that in 2003 a requisition was sent for enquiry. During the enquiry, he did not visit the Office of Jibon Bima Corporation, Chattogram. During the investigation, he did not find the annual audit report of the Jibon Bima Corporation. As per the information received from the Jibon Bima Corporation, the accused misappropriated total Tk. 7,08,238/50. During the investigation, notice was served upon the accused but he did not appear. During enquiry, he did not record the statement of General Manager Habibur Rahman and the policyholders. He did not record the statement of the accused. On recall, he produced the documents seized on 08.10.2004. He proved the seized documents as exhibits 9 and 10 series.

P.W. 4 Mohammad Shah Alam is the Upper Division Assistant, at Jibon Bima Corporation. He stated that on 20.04.2005 Inspector Aminur Rahman seized the documents of the departmental case and he signed the seizure list. He proved his signature on the seizure list as exhibit 3/2. He could not remember who was present at the time of the seizure. He denied the suggestion that Inspector Aminur Rahman did not visit his office and that he and Manjurul Islam went to the Office of the Anti-Corruption Commission along with the seized documents.

P.W. 5 Md. Abdus Salam Sarker stated that at the time of occurrence, he was the Assistant General Manager, Jibon Bima Corporation, Head Office, Dhaka. A departmental case was lodged against the accused for misappropriation of the money of the policyholders. He served notice upon the accused Rafique Ahmed. In the departmental proceeding, the allegation of misappropriation of the money of the policyholder was proved. On 14.07.2003, he submitted the report. During cross-examination, he admitted that there was a Trade Union and once he was elected as the President of the Union. He admitted that few Officers of the Chattogram Divisional Office after printing the PR book received money from the policyholders for which they were punished. He denied the suggestion that he had an intimate relationship/communication with the Officers of the Trade Union. He also admitted that in 2001 name of the accused was included in the list for promotion. He denied the suggestion that the rivals of the accused brought a false allegation and conducted the enquiry through him. He denied the suggestion that at the influence of the enemy of the accused, he submitted the report.

P.W. 6 Ahmad Sagir was the Manager of Jibon Bima Corporation, Area Office, Chattogram. On 05.10.2004 Inspector Aminur Rahman seized documents and took his signature. Shafiqur Rahman took custody of the documents. He proved his signature as exhibits 7/2, 5/2, 6/2. The copy of the receipt of premium, hand receipts and different documents were seized. He denied the suggestion that he was not present at the time of the seizure.

P.W. 7 Mizanur Rahman stated that on 05.10.2004, he discharged his duty as Assistant Manager, Regional Office. On that day, Inspector Aminur Rahman seized documents based on the seizure list. He proved his signature on the seizure list as exhibits 6/3, 5/2 and 7/3. He denied the suggestion that due to enmity, he deposed falsely.

P.W. 8 Md. Shafiqur Rahman Khan stated that on 04.10.2004 at 12.45 pm, the documents mentioned in the seizure list were seized and those were handed over to his custody. He produced the seized documents. He proved seized documents as exhibits 11-15. He produced the documents seized on 04.10.2004 at 4.00 pm as exhibits 16-21. He also proved the documents seized on 06.10.2004 at noon as exhibits 22 and 23. During cross-examination, he stated that he heard that the accused received the money of the premium and subsequently misappropriated it.

P.W. 9 Md. Jahurul Islam stated that on 25.01.2010 Samsuddin Ahmad, Sub-Assistant Director of the ACC, seized documents in his presence. He signed the seizure list. He proved the seizure list as exhibit 24 and his signature as exhibit 24/1. The Investigating Officer Samsuddin Ahmmad wrote the seizure list. Three set of documents were seized.

P.W. 10 Md. Rashedul Bari stated that at the time of occurrence, he was the clerk of Zia and Brothers. At that time, he opened a life insurance policy. After payment of the premium for five years, he withdrew the money. Nobody misappropriated the instalment of his policy. The defence declined to cross-examine him.

P.W. 11 Samsuddin Ahammed is the Sub-Assistant Director of the ACC, Combined District Office, Chattogram-1. He stated that he was appointed as Investigating Officer by memo dated 23.11.2009. During the investigation, he recorded the statement of witnesses and also recorded the statement of accused Rafique Ahmed. On 25.01.2010, he submitted his statement and the money receipt and prepared the seizure list (exhibit 24). He proved his signature on the seizure list as exhibit 24/1. He proved the money receipt as exhibit 25 and the reply to the show cause notice as exhibit 26. During the investigation, he found the prima facie truth of the allegation against the accused and submitted the memo of evidence against him. On 31.05.2010, he was transferred

and handed over the case docket to the Deputy Director. During cross-examination, he stated that the accused Rafique Ahmed was not personally known to him. On 23.11.2009 he took up investigation of the case. On 25.01.2010 the accused made the statement accepting the allegation. Rehana Khatun did not make any allegations. The occurrence took place in 1994 and the FIR was lodged in 2004. The accused presented two documents. After ten years, the FIR was lodged. The policyholders filed the complaint in the Office of Jibon Bima. He denied the suggestion that the accused was innocent.

P.W. 12 Md. Manirul Islam stated that from November/2009 to March/2011, he discharged his duty as a Sub-Assistant Director, Anti-Corruption Commission, Combined District Office, Chattogram-1. He was appointed as Investigating Officer on 07.07.2010. He proved the memo dated 07.07.2010 as exhibit 28. He submitted the charge sheet on 25.11.2010. During cross-examination, he stated that he did not investigate the case. On perusal of the records, he submitted the charge sheet.

Learned Advocate Mr. Abdus Salam Mamun appearing along with learned Advocate Mr. Shajada Akter Bakul and learned Advocate Mr. Ahsanul Hoque (Liton) on behalf of the appellant submits that the accused Md. Rafique Ahmed is the Deputy Manager of Sales and the Sales Officer issued the money receipts. Admittedly, at the relevant time, many officers of the trade union used to issue the money receipts after receiving the premium from the policyholders and no money receipt was issued by the appellant. During the trial, the signatures of the accused on the alleged money receipts (exhibits 9 and 10 series) were not sent to the handwriting expert. He further submits that the occurrence took place from 30.12.1993 to 31.10.1994 and the FIR was lodged after ten years on 25.07.2004. The prosecution neither proved the annual audit report nor examined any policyholder whose money was allegedly misappropriated by the accused. The prosecution failed

to prove the charge against the accused beyond all reasonable doubt and the trial Court without evidence illegally convicted the accused. He prayed for the acquittal of the accused.

Learned Advocate Ms Quamrun Nessa appearing on behalf of respondent No. 2, Anti-Corruption Commission, submits that the accused by applying on 25.01.2010 (exhibit 25) to the General Manager Jibon Bima Corporation admitted that the accused received total Tk. 24,560 on 28.06.2001 and issued the money receipts (exhibits 9 and 10) to the policyholders. She also submits that since the accused is the Deputy Manager of Sales, he is responsible for the misappropriation of the premium received from the policyholders. The trial Court on proper assessment of the evidence legally passed the impugned judgment. Therefore, she prayed for the dismissal of the appeal.

I have considered the submissions of the learned Advocate Mr. Abdus Salam Mamun who appeared on behalf of the appellant and the learned Advocate Ms. Quamrun Nessa who appeared on behalf of respondent No. 2, Anti-Corruption Commission, perused the evidence, impugned judgment and order passed by the trial Court and the records.

On perusal of the records, it appears that the accused Md. Rafique Ahmed was the Deputy Manager (Sales), Jibon Bima Corporation, Area Office, Chattogram. It has been alleged that from 30.12.1993 to 31.12.1994 the accused received total Tk. 1,51,530 from four policyholders (1) Syedul Haque, (2) Rehena Begum, (3) A.K.M. Sarwar and (4) Md. Azizur Rahman. The prosecution neither proved the annual audit report of the said office nor the said policyholders were examined by the prosecution.

P.W. 11 Investigating Officer Samsuddin Ahammed stated that on 25.01.2010 the accused submitted statement under Rule 11 of the Anti-Corruption Commission Rules which has been seized by the Investigating Officer and was proved as exhibit 25. On perusal of the

seizure list dated 25.01.2010, it reveals that P.W. 9 Md. Jahurul Islam and one Md. Jahangir Alam is the witness of the seizure list dated 25.01.2010. P.W. 9 Md. Jahurul Islam did not corroborate the evidence of P.W. 11 as regards filing the application dated 09.07.2009 (exhibit 25) to P.W. 11 by accused Md. Rafique Ahmed during the investigation of the case. On perusal of exhibit 25, it reveals that the said application was submitted to the General Manager, Administration, not to P.W. 11. The prosecution did not examine the General Manager, Administration to prove that during enquiry of the departmental case, the accused submitted the exhibit 25 to the General Manager, Administration, Jibon Bima Corporation admitting realization of Tk. 14,560 from Rehena Begum.

The premium of the policy is received by the sales officer. None of the policyholders was examined by the prosecution. The signature of the accused Md. Rafique Ahmed on exhibits, 25, 9 and 10 series has been denied by the defence. The signature of the accused Md. Rafique Ahmed on the exhibit 25, 9 and 10 series was not sent to the handwriting expert for opinion under Section 73 of the Evidence Act, 1872. In the absence of the admitted signature of the accused Md. Rafique Ahmed, it cannot be held that he issued the exhibits 9 and 10 series and submitted the application dated 09.07.2001 (exhibit 25) to the General Manager, Administration. The prosecution did not prove any other money receipts in the case. Although the trial Court relied on some money receipts allegedly issued by the accused Md. Rafique Ahmed but exhibit numbers of those money receipts were not mentioned in the impugned judgment passed by the trial Court. On perusal of the money receipt No. Da 408351 dated 28.06.2001 (exhibit 26), it appears that one Officer of Jibon Bima Corporation issued the said money receipt dated 28.06.2001 but there is no seal of the said officer. The concerned Officer of Jibon Bima Corporation who issued

the Money Receipt No. Da 408351 dated 28.06.2001 was not implicated as accused in the case.

To prove the charge under Section 409 of the Penal Code, 1860 read with Section 5(2) of the Prevention of Corruption Act, 1947 against the accused, the prosecution has to prove that he issued the money receipts in favour of the policyholders. The prosecution failed to prove that the accused issued the money receipts (exhibits 9 and 10 series) and applied on 09.07.2001 (exhibit 25) to the General Manager, Administration admitting realisation of Tk. 14,560. The prosecution also did not examine the officer who issued the Money Receipt No. Dha 408351 dated 28.06.2001. P.W. 2 stated that no premium was misappropriated. P.W. 10 admitted that after payment of the premium for five years, he had withdrawn the money. During cross-examination, P.W. 5 Md. Abdus Salam Sarker, Assistant General Manager, Jibon Bima Corporation, Head Office, Dhaka admitted that no audit report was submitted at the time of investigation and the Officers of the Trade Union, Chattogram Office having published the PR book received money from the policyholders. Therefore, the false implication of the appellant cannot be ruled out.

In view of the above facts and circumstances of the case, evidence, findings, observation and the proposition, I am of the view that the prosecution failed to prove the charge against the accused by adducing legal evidence beyond all reasonable doubt and the trial Court failed to assess and evaluate the evidence of the prosecution witnesses in its true perspective and arrived at a wrong conclusion as to the guilt of the appellant.

I find merit in the appeal.

In the result, the appeal is allowed.

The impugned judgment and order of conviction and sentence passed by the trial Court against the accused Md. Rafique Ahmed is hereby set aside.

Send down the lower Court's records at once.