

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)**

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 6831 of 2017

Md. Rafique Ahmed

...Convict-appellant

-Versus-

The State and another

...Respondents

Mr. Abdus Salam Mamun, Advocate with

Mr. Ahsanul Hoque (Liton), Advocate

...For the convict-appellant

Mr. Md. Shahidul Islam, A.A.G with

Mrs. Sharmin Hamid, A.A.G

...For the State

Ms. Quamrun Nessa, Advocate

...For the respondent No. 2

Heard on 10.11.2024, 25.11.2024,
11.11.2024 and 18.11.2024.

Judgment delivered on 26.11.2024

This criminal appeal under Section 10 of the Criminal Law Amendment Act, 1958 is directed challenging the legality and propriety of the impugned judgment and order dated 04.06.2017 passed by Divisional Special Judge, Chattogram in Special Case No. 19 of 2012 arising out of Kotwali Police Station Case No. 37 dated 25.07.2004 corresponding DAB GR No. 23 of 2004 convicting the appellant under Section 409 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947 and sentencing him to suffer rigorous imprisonment for 03(three) years and fine of Tk. 10,000, in default, to suffer rigorous imprisonment for 6(six) months.

The prosecution case, in short, is that the appellant Md. Rafique Ahmed was the Deputy Manager, Sales, Jiban Bima Corporation, Sales Office, Chattogram. From 20.05.1995 to 30.12.1995, he received total premium amounting to Tk. 1,20,190 from the policyholders (1) Md. Azizur Rahman, Insurance Policy No. 1019330-8, Insurance Policy No. 1019329-0, Insurance Policy No. 1048409-5, Insurance Policy No. 3103837-5, and Insurance Policy No. 3100329-6 and (2) Saidul Haque, Insurance Policy No. 1046274-5. After recovery of the 5 premium from Md. Azizul Haque and one premium of Tk. 30,020 from policyholder Saidul Haque, he did not deposit the recovered premiums against their policy and misappropriated it.

Md. Shamsuddin Ahamed, Sub-Assistant Director of the Anti-Corruption Commission took up the investigation of the case and during the investigation, he recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898, seized documents and after completing the investigation, he submitted the memo of evidence. After that, he was transferred and P.W. 10 Md. Humayun Kabir, Sub-Assistant Director of Anti-Corruption Commission, Combined District Office, Cumilla took up investigation of the case and on 14.06.2010 he obtained the approval for submitting charge sheet and accordingly, he submitted charge sheet on 11.08.2010 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, Chattagram who took cognizance of the offence against the accused under section 409 of the Penal Code, 1860 and section 5 (2) of the Prevention of Corruption Act, 1947 and sent

the records to the Divisional Special Judge, Chattogram for disposal of the case. During trial, charge was framed against the accused under section 409 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947 which was read over and explained to the accused and he pleaded not guilty to the charge and claimed to be tried following the law.

The prosecution examined 10 witnesses to prove the charge against the accused and the defence cross-examined the prosecution witnesses, After examination of the prosecution witnesses, the accused was examined under section 342 of the Code of Criminal Procedure, 1898 and the defence declined to adduce any DW. After concluding trial, the trial court by impugned judgment and order convicted the accused and sentenced him as stated above against which he filed the appeal.

P.W. I Md. Ali Hussen stated that in 1999, he joined with Jiban Bima Corporation as Assistant Manager. The accused Md. Rafique Ahmed was Deputy Manager of Sales, Jiban Bima Corporation. From 20.5.1995 to 30.12.1995 he received Tk. 12,080, 12,080, 13,980, 58,440 and 10,590 against 5 insurance policies of policyholder Md. Azizur Rahman and Tk. 13,010 as a premium from policyholder Saidul Haque. He did not deposit the said amount against the insurance policies of the said policyholders and misappropriated for which departmental proceeding was initiated against him. He conducted the departmental proceeding and the accused was found guilty. Subsequently, he was dismissed from service. During cross-examination, he stated that the departmental proceeding was initiated in 2003. Abdus Salam Sarker was the inquiry officer of the departmental proceeding. He could not say whether Saidul

Haque deposed in the departmental proceeding. He admitted that the departmental proceeding was initiated in the absence of the accused Md. Rafique Ahmed. The policyholder Sarwar made the allegation against the accused. In the departmental proceeding, evidence was recorded in one day and the inquiry officer submitted the report on 14.7.2003. He denied the suggestion that without taking evidence from the policyholders, he submitted a false report.

P.W.2 Md. Monjurul Islam is the Assistant Manager, Jiban Bima Corporation, Dhaka. He stated that the records of the departmental proceeding, total 109 pages, and the note sheet, total 27 pages, were seized and handed over to his custody. He produced the photocopy of the seized document and the original document is lying with Special Case No. 18 of 2012. The submitted photocopies of the documents are identical to the original documents. The seized documents were handed over to his custody. He proved the Zimmanama as exhibit-I and his signature as exhibit-1/1. He proved the documents given to his custody as exhibit 2. During cross-examination, he stated that the accused Md. Rafique Ahmed was not known to him. He came to know about the irregularity of the accused from 1999 to 2000. Immediately after the complaint, no step was taken against him. He could not say whether the policyholders submitted an affidavit stating that the accused misappropriated the premium.

P.W. 3 Md. Aminur Rahman stated that from 16.01.2004 to 2006 he discharged his duty as Inspector of the Bureau of Anti-Corruption. He conducted the inquiry of the nothi No. 87/2003(Tax force-I) on 12.02.2004. On 20.04.2004 at 12.30 he seized record from Manjurul Islam, Assistant Manager, Jiban Bima

Corporation. He proved the seizer list as exhibit 3. He handed over the seized documents to the custody of Manjurul Islam. During the inquiry, he made a recommendation to file cases year-wise for misappropriation of total Tk. 7,08,238.50. While he was discharging his duty as Deputy Manager (Sales), Jiban Bima Corporation, Sales Office, Chittagong, he lodged the FIR regarding the misappropriation of Tk. 1,20,190 from 20.05.1995 to 30.12.1995. He proved the FIR as exhibit-4 and his signature as exhibit-4/1. He partly investigated the case. On 4.10.2002 he seized 5 items of documents. He proved the seizure list as exhibit-5 and his signature as exhibit-5/1 and handed over the documents to the custody. On 6.10.2004 at noon, he seized documents from Ahmed Sagir. He proved the seizure list as exhibit-6 and his signature as exhibit-6/1. On 7.10.2004, he seized documents from Shafiqur Rahman. He proved the said seizure list as exhibit-7 and his signature as exhibit-7/1. He handed over the documents mentioned in the seizure lists (exhibits 6 and 7) to the custody. On 8.10.2004, he seized one item of documents from AKM Sarwar. He proved the seizure list as exhibit-8 and his signature as exhibit-8/1. Subsequently, he handed over the seized documents mentioned in exhibit-8 to the investigating officer. In the meantime, the Bureau of Anti-Corruption was abolished and the Anti-Corruption Commission was formed. After that, he handed over the records to the new investigating officer. During cross-examination, he stated that during the inquiry, he did not visit the Divisional Office of Jiban Bima Corporation, Chattagram. He did not seize the annual audit report. He could not say whether he sent notice to the accused through registered post. He could not say anything about whether any notice was sent to the accused. He

denied the suggestion that no notice was sent to the accused. He affirmed that a copy of the notice is lying with the records and he did not record the statement of the policyholders. On recall by the prosecution, he stated that he submitted the documents seized based on the seizure list dated 8.10.2004 and proved the same as exhibit 9.

P.W. 4 Mohammad Shah Alam is the Junior Officer, Jiban Bima Corporation. He stated that on 20.4.2004 Inspector Aminur Rahaman, Bureau of Anti-corruption sized documents of the departmental proceeding initiated against the accused Md. Rafique Ahmed. He signed the seizure list. He proved his signature on the seizure list as exhibit-3/2, He denied the suggestion that he deposed falsely.

P.W.5 Md. Abdus Salam Sarker stated that at the time of occurrence, he was discharging his duty as Assistant General Manager, Jiban Bima Corporation, Head office, Dhaka. A departmental proceeding was initiated against the accused Md. Rafique Ahmed for misappropriation of the premium received from the policyholders. He was the inquiry officer of the departmental proceeding. After inquiry, he submitted the report on 14.07.2003. During cross-examination, he stated that he was the president of the Trade Union of Jiban Bima Corporation. The accused was not present in the departmental proceeding. He admitted that the Officers of the Trade Union having published the PR book received the premium from the policyholders for which they were punished. He admitted that in 2001, the name of the accused was included in the list for promotion. He denied the suggestion that he deposed falsely.

P.W. 6 Ahmad Sagir stated that on 5.10.2004 he discharged his duty as Manager of Area Office, Jiban Bima Corporation, Chattogram. On that day, Inspector Aminur Rahman seized documents, took his signature and handed over the seized documents to the custody of Shafiqur Rahman. He proved his signature as exhibit-7/2. During cross-examination, he stated that the copy of the PR receipt, hand receipt and other documents were seized.

P.W.7 Mizanur Rahman is the Deputy Manager, Jiban Bima Corporation, Chittagong. He stated that on 05.10.2004 he discharged his duty as Assistant Manager, Regional Office. On that day, Inspector Aminur Rahman seized documents from his office and took his signature. He proved his signature as exhibit-7/3. During cross-examination, he stated that PR receipt and insurance records bank deposit slips and other documents were seized. He denied the suggestion that he deposed falsely.

P.W. 8 Md. Shafiqur Rahman Khan is the Assistant Manager, Jiban Bima Corporation, Chittagong. He stated that on 24.10.2004 at 12.45 noon the documents were handed over to his custody. He proved those documents as exhibits 10 to 14. The documents seized on 06.10.2004 at noon were also given to his custody. He proved two sets of records of insurance policy as exhibits-15 to 16. The documents seized on 7.10.2004 at 4.00 pm were given to his custody. He proved the documents as exhibit 17. During cross-examination, he stated that he heard that the accused misappropriated the premium received from the policyholders. The policyholder made the allegation.

P.W. 9 Md. Rashedul Bari was a clerk of Zia and Brothers. He stated that he was a policyholder of Jiban Bima Corporation.

After payment of the premium for five years, he withdrew the money of his policy. He stated that his premium was not misappropriated. The defence declined to cross-examine P.W.9.

P.W.10 Md. Humayun Kabir is the Sub-Assistant Director, Anti-Corruption Commission, Combined District Office, Cumilla. He stated that the previous investigating officer Sub-Assistnat Director Md. Samsuddin Ahamed submitted the memo of evidence. Thereafter, he was transferred. After that, he took up investigation of the case. On perusal of the records, he found that the accused Md. Rafique Ahmed received total Tk. 1,20,190 from the policyholders and misappropriated without depositing the premium against the policies. He obtained approval on 14.6.2010 for submitting charge sheet. He proved the said approval as exhibit 18. During cross-examination, he affirmed that he did not make any investigation. He submitted the charge sheet based on the memo of evidence submitted by the previous investigating officer.

The learned Advocate Mr. Abdus Salam Mamun appearing on behalf of the appellant submits that the accused Md. Rafique Ahmed was Deputy Manager, Sales, Jiban Bima Corporation, Chattogram and the prosecution failed to prove any money receipt issued by the accused. He further submits that the handwriting/specimen signature of the money receipt No. Cha 62776 (exhibit-9) and 5 money receipts (exhibit-2 series) were not sent to the handwriting expert to prove that the accused received the premiums from the policyholders. The prosecution failed to prove the charge against the accused beyond all reasonable doubt and the trial Court failed to assess and evaluate the evidence of the prosecution witnesses applying correct principle of

appreciation of evidence. Therefore, he prayed for allowing the appeal.

The learned Advocate Mrs. Quamrun Nessa (Ratna) appearing on behalf of respondent No.2 (ACC) submits that the accused received total Tk. 1,20,190 against 5 insurance policies of policy holder Md. Azizur Rahman and one premium from policyholder Syed Saidul Haque and the prosecution proved the money receipt No. Cha 62776 issued for Tk.13,020 in favour of Sayed Saidul Haque as exhibit 9 and 5 money receipts regarding payment of the premium by Md. Azizur Rahman as exhibit-2 series. The prosecution proved the charge against the accused beyond all reasonable doubt and the trial court on correct assessment and evaluation of the evidence passed the impugned judgment and order. She prayed for the dismissal of the appeal.

I have considered the submission of the learned Advocate Mr. Abdus Salam Mamun who appeared on behalf of the appellants and learned Advocate Mrs. Quamrun Nessa (Ratna) who appeared on behalf of respondent No. 2(ACC), perused the evidence, the impugned judgments and orders passed by the courts below and the records.

It has been alleged that the accused received total Tk. 1,20,190 from two policyholders namely, Md. Azizur Rahman and Md. Saidul Haque and the accused Md. Rafique Ahmed issued the money receipts to the said policyholders.

On perusal of the money receipt No. Cha 62776 dated 30.12.1995 (exhibit-9) reveals that by issuing said money receipt Tk. 13,020 was received from the policyholder Saidul Haque. The prosecution proved the photocopies of the money receipt No. Cha 521274 dated 26.12.1995 for payment of Tk. 10,590, money

receipt No. (not eligible for reading) dated 23.5.1995 for payment of Tk. 12,080, money receipt No. Cha 433964 dated 26.9.1995 for payment of Tk.58,440, money receipt No. Cha 49773 dated 20.5.1995 for payment of Tk.12,080 and money receipt No. Cha 459965 dated 20.6.1995 for payment of Tk. 13,980. All the money receipts (exhibit-2 series) were allegedly issued in favour of policyholder Md. Azizur Rahman by accused Md. Rafique Ahmed. As a recipient of the said premium one officer put his initial on the money receipts and there is a seal of the Jiban Bima Corporation, Chattogram on exhibit-9 and 2 series. There is no seal of any particular officer on exhibit- 9 and 2 series. During the trial, the prosecution did not examine the said policyholders as witnesses in the case.

The original of exhibit-2 series and 9 was lying with Special Case No.18 of 2012 and the photocopy of those documents was legally proved in the case. The alleged signatures on the money receipts (exhibit-2 series and 9) were not sent to the handwriting expert to ascertain that the accused issued the money receipts (exhibit-2 series and 9). In the absence of any opinion of the handwriting expert as regards the alleged signature of the accused Rafique Ahmed on the money receipts (exhibit-2 series and 9) it cannot be held that the accused Md. Rafique Ahmed issued those money receipts (exhibit-2 series and 9).

P.W. 5 Md. Abdus Salam Sarker admitted that he was the President of the Trade Union of Jiban Bima Corporation, Area Office, Chattogram and at the relevant time, the Officers of the Trade Union having published the PR book used to receive the premiums from the policyholders for which they were punished.

Therefore, the false implication of accused Md. Rafique Ahmed cannot ruled out.

Because of the above evidence, facts and circumstances of the case, findings, observation and the proposition, I am of the view that the prosecution failed to prove the charge against the accused to the hilt beyond all reasonable doubt.

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.

However, there will be no order as to costs.

Send down the lower Court's records at once.