

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 6833 of 2017

Md. Rafique Ahmed

...Convict-appellant

-Versus-

The State and another

...Respondents

Mr. Abdus Salam Mamun, Advocate with

Mr. Mohammad Abdul Mannan, Advocate with

Mr. Ahsanul Hoque (Liton), Advocate

...For the convict-appellant

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

Ms. Sharmin Hamid, A.A.G

...For the State

Ms. Quamrun Nessa (Ratna), Advocate

...For the respondent No. 2,

Anti-Corruption Commission

Heard on 10.11.2024, 11.11.2024, 12.11.2024 and  
14.11.2024

**Judgment delivered on 18.11.2024**

This criminal appeal under Section 10 of the Criminal Law Amendment Act, 1958 is directed against the judgment and order dated 04.06.2017 passed by Divisional Special Judge, Chattogram in Special Case No. 21 of 2012 arising out of Kotwali Police Station Case No. 39 dated 25.07.2004 corresponding DAB GR No. 25 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 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.

The prosecution case, in short, is that the accused Md. Rafique Ahmed was the former Deputy Manager of Sales, Jibon Bima Corporation, Sales Office, Chattogram. From 23.06.1997 to 30.12.1997 he received total Tk. 1,43,601/60 from five policyholders. He received Tk. 12,080 by Money Receipt No. 122378 dated 23.06.1997 against

Insurance Policy No. 1019330-8, Tk. 12,080 by Money Receipt No. 122490 dated 23.07.1997 against Insurance Policy No. 1019329-0, Tk. 13,980 by Money Receipt No. 657848 dated 28.08.1997 against Insurance Policy No. 10484095, Tk. 58,440 by Money Receipt No. 564370 dated 23.09.1997 against Insurance Policy No. 3103837-5, and Tk. 10,590 by Money Receipt No. 432409 dated 10.12.1997 against Insurance Policy No. 3100329-6 from policyholder Md. Azizur Rahman. He received Tk. 9,419.10 by Money Receipt No. 112275 dated 27.11.1997 against Insurance Policy No. 3104763-2 from policyholder A.K.M Sarwar and Tk. 10425 by Money Receipt No. 112274 dated 27.11.1997 against the Insurance Policy No. 0181610-7 from policyholder Alhaj Sirazul Haque. He also received Tk. 13,140 by Money Receipt No. 126681 dated 30.12.1997 against Insurance Policy No. 1031594-3 from policyholder A.K.M. Shahjahan. The accused did not deposit said amount against the said policy and misappropriated total Tk. 1,43,601/60.

P.W. 10 Md. Samsuddin, DAD, ACC, Chattogram took up the investigation of the case. 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 found the prima facie truth of the allegation against the accused and submitted memo of evidence against the accused Md. Rafique Ahmed. Thereafter, he was transferred. After that, DAD Md. Shahidul Alam Sarker, ACC Combined District Office, Chattogram-1 took up the investigation of the case and obtained approval from the ACC for submitting charge sheet against the accused. After that, he submitted charge sheet on 11.08.2010 under Section 409 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947 against the accused.

The learned Magistrate sent the case to the Metropolitan Senior Special Judge, Chattogram 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 case to the Divisional Special Judge, Chattogram for trial and disposal of the case. During the 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 to the accused and he pleaded not guilty to the charge. 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 is the Deputy Manager, Jibon Bima Corporation, Motijheel, Dhaka. He stated that the occurrence took place from 1993 to 2003. The accused Rafique Ahmed was the Deputy Manager (Sales), Jibon Bima Corporation. From 23.06.1997 to 30.12.1997, he received total Tk. 1,43,601.60 from policyholder Azizur Rahman against his five policies, one policy of Sarwar, one policy of Sirajul, one policy of Shahajahan and one policy of Syedul Haque and without depositing the said amount against the policy of the said policyholders misappropriated. He conducted the departmental proceeding and the accused was dismissed from service. During cross-examination, he stated that the departmental proceeding was initiated in 2003. Abdus Salam was the Enquiry Officer of the departmental case. He admitted that the accused Rafique Ahmed was not present in the departmental proceeding. Sarwar was the complainant in the departmental case.

P.W. 2 Md. Manjurul Islam is the Assistant Manager, Jibon Bima Corporation, Head Office, Dhaka. He stated that on 20.04.2005 he discharged his duty as Assistant Manager in the Office of the Jibon

Bima Corporation. He was the custodian of the record of the departmental proceeding initiated against the accused Md. Rafique Ahmed. The said Nathi-2, total 109 pages, and the note sheet, total 27 pages, were seized and given to his custody. He produced the photocopy of the records and the original was submitted in Special Case No. 18 of 2012. The photocopy of the submitted documents is the true copy of the original submitted in the said case. He proved the jimmanama as exhibit 1 and his signature as exhibit 1/1. He proved the Nothi No. 2 as exhibit 2. During cross-examination, he stated that possibly in 1999 or 2000, he came to know about the irregularity of the accused. Immediately after filing the complaint, no action was taken against the accused.

P.W. 3 Md. Aminur Rahman is the Assistant Director, ACC, Combined District Office, Jashore. He stated that he discharged his duty as Inspector of the Bureau of Anti-Corruption, Head Office, Dhaka from 16.01.2004 to 2006. He was entrusted with the enquiry of the Nothi No. 87/03 (Taskforce-1). On 20.04.2004 at 12.30, he seized documents presented by Assistant Manager Manjurul Islam of Jibon Bima Corporation. He proved the seizure list as exhibit 3. He lodged the FIR. He proved the FIR as exhibit 4 and his signature on the FIR as exhibit 4/1. During cross-examination, he stated that 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 05.10.2004 at 3.00 pm, he also seized the documents. He proved the seizure list as exhibit 6 and his signature on the seizure list as exhibit 6/1. On 06.10.2004, he also seized a few documents from Ahmad Sagir. He proved the seizure list as exhibit 7 and his signature on the seizure list as exhibit 7/1. He handed over the documents (exhibits 6 and 7). On 07.10.2004, he seized documents from Ahmad Sagir. He proved the seizure list as exhibit 8 and his signature on the seizure list as exhibit 8/1.

Subsequently, he handed over the documents to the Investigating Officer. During the enquiry, he seized the annual audit report of the life insurance. From the information available in the Head Office, Jibon Bima Corporation, he found the truth of the misappropriation of total Tk. 7,08,238.50. He did not record the statement of policyholders. On recall, he stated that on 08.10.2004 he seized documents and prepared the seizure list. He proved his signature on the seizure list (exhibit 1). He proved the documents seized based on the seizure list dated 08.10.2004 as exhibits 10 to 13.

P.W. 4 Mohammad Shah Alam is the Upper Division Assistant, Jibon Bima Corporation. He stated that on 20.04.2004 Inspector Aminur Rahman seized the record of the departmental proceeding initiated against the accused Rafique Ahmed. He signed the seizure list. He proved his signature on the seizure list as exhibit 3/2. He admitted that he and Manjurul Islam used to sit on the same floor in different rooms.

P.W. 5 Md. Abdus Salam Sarker is the DGM (Retired), Jibon Bima Corporation, Dhaka. He stated that at the time of occurrence, he discharged his duty as Assistant Manager, Jibon Bima Corporation, Head Office, Dhaka. A departmental case was initiated against the accused Rafique Ahmed for misappropriation of the premium received from the policyholders. He was the Enquiry Officer of the departmental case. He submitted the report on 14.07.2003. The accused was absent in the departmental proceeding. He admitted that a few Officers of the Trade Union of Divisional Office, Chattogram having printed the PR book took the premium from the policyholders. They were also punished. He denied the suggestion that he had an intimate relationship with the Officers of the Trade Union. He admitted that the name of the accused was included in the list in 2001 for promotion.

P.W. 6 Ahmad Sagir stated that on 05.10.2004, he discharged his duty as Manager, Area Office, Jibon Bima Corporation,

Chattogram. On 05.10.2004, Inspector Aminur Rahman seized documents from his office and he signed the seizure list. The documents were handed over to the custody of Shafiqur Rahman. He proved his signature as exhibit 6/2. During cross-examination, he stated that a copy of the PR receipt, hand receipts and other documents were seized. He denied the suggestion that he was not present at the time of the seizure.

P.W. 7 Mizanur Rahman is the Deputy Manager, Jibon Bima Corporation. He stated that on 05.10.2004, he discharged his duty as Assistant Manager, Regional Office. On that day, Inspector Aminur Rahman seized documents and signed the seizure list. He proved his signature as exhibit 6/3. During cross-examination, he stated that PR receipt, insurance nothi and bank deposits were seized.

P.W. 8 Md. Shafiqur Rahman Khan was the Assistant Manager, Jibon Bima Corporation. He stated that on 04.10.2004 at 12.45, he took custody of the documents mentioned in the seizure list. He proved the documents mentioned in the seizure list as exhibits 14 to 18. He produced two sets of documents seized on 05.10.2004 at 3.00 pm. He proved those documents as exhibits 19 to 23. The documents seized on 06.10.2004 at 12.00 were proved as exhibits 24 and 25. He heard that the accused received the premium and misappropriated it. The policyholder made a complaint. He denied the suggestion that he deposed without knowing anything.

P.W. 9 Md. Rashedul Bari is a policyholder. He stated that at the time of occurrence, he was the clerk of Zia and Brothers. He paid the premium of a life insurance policy for five years. After that, he had withdrawn the premium of the policy. No one misappropriated the premium of his policy. The defence declined to cross-examine him.

P.W. 10 Md. Samsuddin is the Police Inspector, C.I.D, Chattogram. He stated that from July/2007 to May 2010, he discharged his duty as DAD. On 15.11.2009, he took up an investigation of the

case following the instruction of the authority. During the investigation, he recorded the statements of witnesses and found the truth of the allegation that the accused Rafique Ahmed received total Tk. 1,43,601.60 as premiums. He submitted the memo of evidence. Thereafter, he was transferred. During cross-examination, he stated that the accused misappropriated total twelve premiums of five persons. During the investigation, he recorded the statement of policyholder AKM Sarwar. He did not send the signature on the receipt of the premium to the handwriting expert. The accused admitted his signature. He did not seize any record regarding the complaint made by the five policyholders.

P.W. 11 Md. Shahidul Alam Sarker is the Sub-Assistant Director of ACC, Combined District Office, Chattogram-1. He discharged his duty as Assistant Director from January, 2010-December, 2016. On 11.08.2010 he took up investigation of the case. The previous Investigating Officer Md. Samsuddin Ahmed submitted the memo of evidence. The Head Office of the ACC had approved on 14.06.2010 to submit the charge sheet. Md. Samsuddin Ahmed was transferred. He was instructed to submit the charge sheet. He proved two memos as exhibit 26 series. On 11.08.2010, he submitted charge sheet against the accused under Section 409 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947.

Learned Advocate Mr. Abdus Salam Mamun appearing along with learned Advocate Mr. Mohammad Abdul Mannan and learned Advocate Mr. Ahsanul Hoque (Liton) on behalf of the appellant submits that the accused Md. Rafique Ahmed was the Deputy Manager Sales, Jibon Bima Corporation, Chattogram and the premium was received from the policyholders by the sales officer and the prosecution only proved four money receipts as exhibits 10 to 13 received from Azizur Rahman and no other money receipts were proved by the prosecution but the prosecution did not send the alleged signature of the

appellant on the exhibits 10 to 13 to the handwriting expert to prove that the accused received said premium from policyholder Azizur Rahman. He further submits that none of the policyholders was examined in the case and in a similar situation, this Court in Criminal Appeal Nos. 6829 of 2017 and 6830 of 2017 acquitted the accused Md. Rafique Ahmed from the charge of misappropriation of the alleged premium received from the policyholders. He prayed for allowing the appeal. The prosecution failed to prove the charge against the accused beyond all reasonable doubt and the trial Court without proper assessment and evaluation of the evidence of the prosecution witnesses illegally convicted the accused.

Learned Advocate Ms. Quamrun Nessa (Ratna) appearing on behalf of respondent No. 2, Anti-Corruption Commission, submits that the accused received total Tk. 1,43,601.60 from four policyholders A.K.M. Shahjahan, A.K.M Sarwar, Sirazul Haque and Syedul Haque and the accused admitted his signature on the money receipts and the prosecution proved the misappropriation of premium total Tk. 36,431.50. 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 (Ratna) 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.

The prosecution case is that when the accused was discharging his duty as Deputy Manager of Sales, Jibon Bima Corporation, Chattogram, he received total Tk. 1,43,601.60 as premiums from five policyholders namely (1) Md. Azizur Rahman, (2) A.K.M Sarwar, (3) Alhaj Sirazul Haque, (4) A.K.M. Shahjahan and (5) Syedul Haque. During the trial, none of the policyholders was examined in the case. The money receipts were allegedly issued by the accused Md. Rafique



Ahmed in favour of said policyholders. The prosecution proved a photocopy of four money receipts allegedly issued by the accused Rafique Ahmed in favour of A.K.M. Shahjahan, A.K.M Sarwar, Sirazul Haque and Syedul Haque as exhibits 10 to 13.

On perusal of exhibits 10 to 13, it appears that there is an official seal of the Jibon Bima Corporation on those exhibits and one officer of Jibon Bima Corporation issued the exhibits 10 to 13. There is no seal of any particular officer of Jibon Bima Corporation on those exhibits. During cross-examination, P.W. 5 and 10 admitted that he did not send the signatures on the money receipts to the handwriting experts but the accused admitted his signature. The accused Md. Rafique Ahmed did not make any statement under Section 164 of the Code of Criminal Procedure, 1898 and he was also not present in the departmental proceeding. Therefore, the question of admission of his signature on exhibits 10 to 13 will not arise at all. The prosecution alleged that the accused issued five money receipts to the policyholder Azizur Rahman and received total Tk. 107170 but those money receipts were not proved during the trial of the case, although photocopies of those money receipts are available with the records. No explanation is given by the prosecution as to why the original money receipts issued in favour of the policyholders were not proved in the case. In the absence of any proof of receipt of the premium from the policyholder Azizur Rahman and others, it cannot be held that the accused received the premium from the policyholders.

It is found that the documents of departmental proceedings initiated against the accused were proved during the trial of the case. In the departmental proceeding, the Evidence Act, 1872 is not applicable. Therefore, the accused cannot be convicted relying on the finding of the departmental proceeding initiated against the accused by concerned authority. None of the policyholders was examined by the prosecution. The alleged money receipts (exhibits 10 to 13) were delivered to the

policyholder. Since the alleged signature of accused on the exhibits 10 to 13 was not sent to the handwriting expert to compare with the admitted signature of the accused, it cannot be held that the accused Md. Rafique Ahmed received the premium from the policyholders. No other money receipt was proved by the prosecution. Therefore, I am of the view that the prosecution failed to prove the charge against the accused 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.