

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

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 6832 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, 11.11.2024,
26.11.2024.

Judgment delivered on 01.12.2024.

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. 20 of 2012 arising out of Kotwali Police Station Case No. 38 dated 25.07.2004 corresponding DAB GR No. 24 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 06(six) years and fine of Tk.

10,000, in default, to suffer rigorous imprisonment for 6(six) months more.

The prosecution case, in short, is that the accused Md. Rafique Ahmed was the Deputy Manager, Sales, Jiban Bima Corporation, Sales Office-52, Chattogram. From 23.05.1996 to 23.12.1996 the accused Md. Rafique Ahmed by money receipt No. 157765 dated 23.05.1996 received Tk. 12,080 against insurance policy No. 1019330-8, money receipt No. 78095 dated 20.06.1996 received premium of Tk. 12,080 against insurance policy No. 1019329-0, money receipt No. 622495 dated 20.07.1996 received Tk. 13,980 against insurance policy No. 1048409-5, money receipt No. 352847 dated 20.09.1996 received Tk. 58,440 against the insurance policy No. 3103837-5 and by the money receipt No. 634059 dated 23.12.1996 received Tk. 10,590 against insurance policy No. 3100329-6 from policyholder Md. Azizur Rahman and by money receipt No. 24343 dated 30.11.1996 received Tk. 13,140 against the insurance policy No. 104674-5 from policyholder Saidul Haque. The accused received total Tk. 1,20,310 against the said insurance policies of Md. Azizur Rahman and Md. Saidul Haque and without depositing the said amount against the said insurance policies misappropriated.

The Bureau of Anti-Corruption vide memo dated 10.08.2004 appointed Aminur Rahman as the investigating officer. After the abolition of the Bureau of Anti-Corruption, P.W. 8 Md. Shafiqur Rahman, Deputy Director, Anti-Corruption Commission was appointed as investigating officer vide memo dated 02.07.2009 by the Anti-Corruption Commission, Head Office, Dhaka and the memo No. 1069 dated 14.06.2009 issued by the Anti-Corruption Commission, Divisional Office,

Chattogram. During the investigation, he seized documents and recorded the statements of witnesses under section 161 of the Code of Criminal Procedure, 1898. After completing the investigation, he found the truth of the allegation made against the accused in the FIR and submitted the memo of evidence against the accused for misappropriation of total Tk. 1,20,310 and the Anti-Corruption Commission, Head Office, Dhaka by memo dated 14.06.2010 had given approval for submitting charge sheet against the accused. Thereafter, P.W. 8 Md. Shafiqur Rahman was transferred. The Anti-Corruption Commission, Head Office, Dhaka by memo dated 30.06.2010 appointed P.W. 10 Md. Monirul Islam as investigating officer and after perusal of the records he submitted charge sheet on 11.08.2010 against the accused Md. Rafique Ahmed under section 409 of the Penal Code, 1860 and section 5(2) of the Prevention of Corruption Act, 1947.

After that, the learned Magistrate sent the case record to the Senior Divisional 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 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 who pleaded not guilty to the charge and claimed to be tried following law.

The prosecution examined 10 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 evidence. After concluding the trial, the trial court by impugned judgment and order was pleased to convict the accused and sentenced him as stated above against which the appellant preferred this appeal.

P.W. I Md. Ali Hussein was the Deputy Manager, Jiban Bima Corporation, Dhaka. He stated that he discharged his duty as Assistant Manager of Jiban Bima Corporation. He joined as Assistant Manager, Jiban Bima Corporation in 1999. From 1993 to 2003 the accused discharged his duty as Deputy Manager(Sales) of Jiban Bima Corporation. From 23.5.1996 to 23.12.1996 the accused Md. Rafique Ahmed received Tk. 12,080, Tk. 12,080, Tk. 13,980, Tk. 58,440 and Tk. 10,590 against 5 insurance policies of policyholder Md. Azizur Rahman and Tk. 13,140 from the policyholder Md. Saidul Haque. He did not deposit the said amount against the policies of those policyholders and misappropriated it. A departmental proceeding was initiated and he conducted the departmental proceeding. He found the accused guilty and he was dismissed from service. During cross-examination, he stated that the departmental case was initiated in 2003. Abdus Salam was the enquiry officer of the departmental case. All the evidence of the witnesses was recorded on the same day and the investigating officer submitted the report on 14.07.2003. He denied the suggestion that there was a dispute between the accused and his colleagues or he deposed falsely.

P.W.2 Md. Monjurul Islam is the Assistant Manager, Jiban Bima Corporation, Head Office, Dhaka. He stated that on 20.04.2004 he discharged his duty as Assistant Manager(Admin),

Head Office, Dhaka and on that day, the Nothi No. 2, total 109 pages, and note sheet, 27 pages, were seized in connection with departmental proceeding initiated against the accused Md. Rafique Ahmed. He proved the photocopy of the said documents as exhibit-2 series. The original of those documents were filed in Special Case No. 18 of 2012 and those documents were handed over to his custody. He proved the Zimmanama as exhibit-1 and the photocopy of the seized documents as exhibit-2. During cross-examination, he stated that in 1990 or 2000 he came to know about the irregularity of the accused. The premium was paid to the accused. He could not say whether the policyholders sworn any affidavit regarding the misappropriation.

P.W. 3 Md. Aminur Rahman is the Assistant Director of the Anti-Corruption Commission, Combined District Office, Jessore. He stated that from 16.01.2004 to 2006, he discharged his duty as Inspector of the then Bureau of Anti-Corruption, Head Office, Dhaka. He was appointed as inquiry officer on 12.02.2004 to inquire about the Nothi No. 87 of 2003(task force-1). During inquiry on 20.04.2004 at 12.30, he seized the documents from Monjurul Islam, Assistant Manager, Jiban Bima Corporation, Dhaka. He proved the seizure list as exhibit-3 and his signature as exhibit-3/1. He handed over the documents to the custody of the Manjurul Islam. After inquiry, he found the truth of the misappropriation of Tk. 7,08,238.50 for which he recommended for filing separate cases for each year. He lodged the FIR against the accused for misappropriation of Tk. 1,20,310 from 18.01.2019 to 05.02.2000. He proved the FIR as exhibit-4. He conducted the part investigation of the case and during the investigation on 04.10.2004, he seized 5 items of documents and prepared the

seizure list. He proved the seizure list as exhibit-5 and his signature as exhibit-5/1. On 06.10.2004 at 12.00 he seized documents from Ahmed Sagir and prepared the seizure list. He proved the seizure list as exhibit-6 and his signature as exhibit-6/1. On 07.10.2004, he also seized documents from Shafiqur Rahman and prepared the seizure list. He proved the seizure list as exhibit-7 and his signature as exhibit-7/1. On 05.10.2004, he seized documents from AKM Sarwar and prepared the seizure list. He proved the seizure list as exhibit-8 and his signature as exhibit-8/1. He handed over the documents to the subsequent investigating officer. After the reconstitution of the Anti-Corruption Commission, he handed over the documents to the new investigating officer of the Anti-Corruption Commission. During cross-examination, he stated that he got the requisition in 2003 for inquiry. During the inquiry, he did not visit the office of the Jiban Bima Corporation, Chattogram. He did not seize the annual audit report. From the documents, he found that the accused misappropriated total Tk. 7,08,235.50. He did not record the statement of the policyholders. He denied the suggestion that he lodged a false case. On recall by prosecution, he proved the documents seized based on the seizure list dated 08.10.2004(exhibit-9). He stated that he is not aware whether Zia and Brothers filed any complaint.

P.W. 4 Mohammad Shah Alam is the Junior Officer, Jiban Bima Corporation, Head Office, Dhaka. He stated that on 20.04.2004, he discharged his duty as UDA. On that day, Inspector Aminur Rahman of the Anti-Corruption Commission seized documents of the departmental case initiated against 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 along with Monjurul Islam went to the office of the ACC along with the seized documents.

P.W. 5 Md. Salam Sarker is the Deputy General Manager(retired) of Jiban Bima Corporation, Dhaka. He stated that at the time of occurrence, he was Assistant General Manager, Jiban Bima Corporation, Head Office, Dhaka. The departmental proceeding was initiated against the accused Md. Rafique Ahmed for misappropriation of the premium received by him from the policyholders. He was appointed as the investigating officer. During the investigation, the allegation of misappropriation of premium was proved. On 14.07.2003, he submitted the report. He admitted that there was a Trade Union in the Jiban Bima Corporation and he was the President of the Officers Association. During the investigation, the audit report was not submitted. He also admitted that a few officers of the Trade Union of Divisional Office, Chattogram having published the PR book received premium from the policyholders for which they were punished. He denied the suggestion that he deposed falsely.

P.W. 6 Ahmed Sagir stated that on 04.10.2004 he discharged his duty as Manager, Jiban Bima Corporation, Area Office, Chattogram. On that day, Inspector Aminur Rahman seized documents from their office and handed over those documents to the custody of Shafiqur Rahman. He proved his signature on the seizure list as exhibit-5/2. 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, Jiban Bima Corporation, Area Office, Chittagong. He stated that on 04.10.2004, he discharged his duty as Assistant Manager, Jiban Bima Corporation, Regional Office. On that day, Inspector Aminur Rahman seized documents from his office and took his signature. He proved his signature as exhibit-6/1. During cross-examination, he stated that PR, insurance records, statement of bank deposit slip and other documents were seized. He denied the suggestion that due to enmity, he deposed falsely.

P.W. 8 Md. Shafiqur Rahman Khan was the Assistant Manager(In-charge) of Jiban Bima Corporation, Chattagram. He stated that on 04.10.2004 at 12.45 noon, the documents seized based on the seizure list were handed over to his custody. He proved those documents as exhibits 10 to 14. He proved the documents seized on 06.10.2004 at noon as exhibits-15 to 16. The ledger and the insurance records seized on 07.10.2004 at 2.30 pm were handed over to the custody of Ahmed Sagir which was subsequently given to his custody. He proved those documents as exhibits-17 and 18. During cross-examination, he stated that he heard that the accused received the premium from the policyholders and misappropriated it. The policyholders made the allegation. He denied the suggestion that he deposed without knowing anything.

P.W. 9 Md. Rashedul Bari stated that at the time of occurrence, he was the clerk of Zia and Brothers. At that time, he opened a policy. After payment of the premium for 5 years, he withdrew the money. His premium was not misappropriated. Defence declined to cross-examine P.W.9.

P.W.10 Md. Monirul Islam is the Sub-Assistant Director, Anti-Corruption Commission, Head Office, Dhaka. He stated that from November 2009 to March 2011, he discharged his duty as Sub-Assistant Director, Anti-Corruption Commission, Combined District Office, Chattogram. He was appointed as investigating officer vide memo dated 30.06.2010. He proved the letter of appointment as exhibit-27. He stated that he received the case docket from the previous investigating officer. He started the investigation on 05.07.2010. The ACC, Head Office, Dhaka had approved vide memo dated 14.06.2010 to submit charge sheet against the accused. He proved the approval as exhibit- 28. The accused Rafique Ahmed misappropriated total Tk. 1,20,310 received against 6 policies and without depositing the said amount misappropriated for which he submitted charge sheet on 11.08.2010 against the accused under section 409 of the Penal Code and section 5(2) of the Prevention of Corruption Act, 1947. During cross-examination, he stated that he did not make any investigation. On perusal of the records seized by the previous investigating officer and the statement of witnesses recorded by the previous investigating officer, he submitted charge sheet.

The learned Advocate Mr. Abdus Salam Mamun appearing on behalf of the appellant submits that the accused Md. Rafique Ahmed was the Deputy Manager of Sales, Jiban Bima Corporation, Chattogram and the prosecution failed to prove any money receipt issued by the accused to prove that he received the premium from the policyholders. He further submits that the handwriting/specimen signature on the money receipt No. Cha 62776 (exhibit-9) and the 5 money receipts (exhibit-2 series) were not sent to the handwriting expert to prove that he received the

money from the policyholders. The prosecution failed to prove the charge against the accused and the trial Court failed to assess and evaluate the evidence of the prosecution witnesses applying the 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 Sayed Saidul Haque and the prosecution proved the money receipt No. Cha 62776 issued for Tk.13,110 in favour of Sayed Saidul Haque and 5 money receipts regarding payment of the premium by Md. Azizur Rahman was proved as exhibit-2 series and the prosecution proved the charge against the accused beyond all reasonable doubt and the trial court on correct assessment and evaluation of the evidence legally 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 judgment and order passed by the court below and the records.

On perusal of the evidence, it appears that the money receipt No. Cha 24344 dated 10.11.1996 (exhibit-9) for Tk. 13,140 was issued in favour of Saydur Rahman. There is no seal of any particular officer on the said money receipt and one Cashier of the Jiban Bima Corporation issued the said money

receipt. There is a seal of Jiban Bima Corporation on (exhibit-9). There is no seal of the accused Md. Rafique Ahmed on exhibits-9. The signature of the officer who received the premium by exhibit- 9 was not sent to the handwriting expert.

The prosecution proved photocopies of 5 (five) money receipt being Nos. Cha 521274 dated 26.12.1995 for payment of Tk. 10,590, the 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 issued in favour of policyholder Md. Azizur Rahman as exhibit-2 series. One officer of the Jiban Bima Corporation put an initial on exhibit-2 series and there is also a seal of Jiban Bima Corporation. There is no seal of any particular officer of Jiban Bima Corporation on exhibit-2 series. The alleged signatures on the exhibit-2 series were not sent to the handwriting expert to ascertain that the accused Md. Rafique Ahmed issued the money receipts (exhibit-2 series).

It has been alleged that the accused Md. Rafique Ahmed received total Tk. 1,20,190 from policyholders Md. Azizur Rahman and Md. Saidul Haque and issued the money receipt to the said policyholders. During the trial, the prosecution did not examine the said policyholders as witnesses in the case. In the absence of any opinion of the handwriting expert as to the signature of the accused Md. Rafique Ahmed on the exhibit-2 series and exhibit-9 it cannot be held that the accused Md. Rafique Ahmed issued those money receipts and received the premium from the said policy holders.

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 received the premiums from the policyholders for which they were punished. Therefore, the false implication of the accused Md. Rafique Ahmed in the case cannot be ruled out.

In view 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.

The accused Md. Rafique Ahmed is acquitted from the charge framed against him.

However, there will be no order as to costs.

Send down the lower Court's records at once.