

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 6829 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. 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

Heard on 06.02.2024, 11.02.2024, 12.02.2024 and
18.02.2024**Judgment delivered on 28.02.2024**

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. 17 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 thereunder to suffer rigorous imprisonment for 1(one) year and fine of Tk. 1000, in default, to suffer rigorous imprisonment for 1(one) month and confiscating the misappropriated amount Tk. 7,377 in favour of the state which is recoverable by selling the movable and immovable property of the appellant.

The prosecution case in short is that the appellant Md. Rafique Ahmed was the Deputy Manager, Sales, Jibon Bima Corporation, Sales Office-52, Chattogram. From 18.01.1999 to 05.02.2000 he received total premium amounting to Tk. 58,962.50 from the policyholders (1) Md. Shadat Hossain, Insurance Policy No. 1016853-2, (2) Khursheda Yeasmin, Insurance Policy No. 1082487-8, (3) Md. Ishaque, Insurance

Policy No. 1043431-4, (4) Sayedul Haque, Insurance Policy No. 1046274-5, (5) Md. Zaker Hossain, Insurance Policy No. 0186185-5, (6) Md. Jasim Uddin, Insurance Policy No. 2302127-2 and (7) Md. Rashedul Bari, Insurance Policy No. 2302126-7. He did not deposit the said amount against the insurance policy of the said policyholders and misappropriated.

P.W. 8 Md. Samsuddin Ahammad, Sub-Assistant Director of the Anti-Corruption Commission, Chattogram-1 took up investigation of the case. During investigation, he recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898 and seized documents. During investigation, he was transferred and P.W. 9 Sub-Assistant Director Md. Fakhurul Islam took up investigation of the case and after completing the investigation, he submitted charge sheet 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 transferred to the Senior Divisional Special Judge, Chattogram for trial who took cognizance of the offence against the accused under Section 409 of the Penal Code, 1860 read with Section 5(2) of the Prevention of Corruption Act, 1947 and transferred the case to the Divisional Special Judge, Chattogram. 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. The prosecution examined 9(nine) 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 as stated above against which he filed the instant appeal.

P.W. 1 Md. Aminur Rahman is an Assistant Director of the Anti-Corruption Commission, Combined District Office, Jashore. He stated that from 16.01.2004 to 2006, he was discharging his duty at Head Office, Bureau of Anti-Corruption. On 12.02.2004, the Bureau of Anti-Corruption instructed him to enquire the Nathi No. 87/03 (Task Force-1). During preliminary enquiry on 20.04.2004 at 12.30, he seized office records in the presence of the Assistant Manager, Jibon Bima Corporation, Dhaka. He proved the seizure list as exhibit 1 and his signature on the seizure list as exhibit 1/1 and handed over those documents to the custody of Manjurul Islam. After preliminary enquiry, he found that Rafique Ahmed misappropriated a total Tk. 7,08,238.50 for which he recommended for lodging FIR against him and he found that from 18.01.1999 to 05.02.2000, the accused Rafique Ahmed misappropriated total Tk. 58,962.50 received as a premium of the insurance policy. Thereafter, he lodged the FIR. He proved the FIR as exhibit 2 and his signature on the FIR as exhibit 2/1. He stated that he partly investigated the case. On 05.10.2004, he seized eighteen items of documents. He proved the seizure list as exhibit 3 and his signature on the seizure list as exhibit 3/1. On 06.10.2004 at noon, he seized documents from Ahmed Sagir. He proved the seizure list as exhibit 4 and his signature on the seizure list as exhibit 4/1. On 07.10.2004, he seized documents from Shafiqur Rahman. He proved the seizure list as exhibit 5 and his signature on the seizure list as exhibit 5/1. On 08.10.2005, he seized eight items of documents from A.K.M Sarwar. He proved the seizure list as exhibit 6 and his signature on the seizure list as exhibit 6/1. Subsequently, he handed over the seized documents to the subsequent Investigating Officer. After reconstitution of the Anti-Corruption Commission, he handed over the case docket to the Investigating Officer. During cross-examination, he stated that in 2003 a requisition was sent for enquiry. On 20.04.2004 he seized documents based on the seizure list. He seized the documents of the departmental

proceeding. During the enquiry, he did not seize the audit report. As per the statement of the Head Office of Life Insurance, the accused misappropriated Tk. 7,08,238.50. He could not remember whether he recorded the statement of the Assistant General Manager Abdus Salam. He did not record the statement of General Manager Hafizur Rahman. During the enquiry, he perused memo No. 3514 dated 27.09.2000. The memo No. 816 of 2002 dated 19.12.2002 was not handed over to him. He did not find the application dated 25.07.2003 filed by the accused. He affirmed that he did not interrogate any of the policyholders. He denied the suggestion that without proper enquiry, he submitted the report. He was re-examined on behalf of the State. He produced the documents seized based on the seizure list dated 08.10.2004. He proved the documents as exhibits 7 to 14. During cross-examination, he stated that he was not aware whether Jiang Brothers made any allegation.

P.W. 2 Mohammad Shah Alam is a Junior Officer of Jibon Bima Corporation, Head Office, Dhaka. He stated that on 20.04.2004, he was the Upper Division Assistant of the Jibon Bima Corporation. On that day, Inspector Aminur Rahman seized the records of the departmental enquiry brought against the accused Rafique Ahmed. He signed the seizure list. He proved his signature on the seizure list as exhibit 1/2. During cross-examination, he stated that at the time of the seizure of documents, no officer was present there. He denied the suggestion that Inspector Aminur Rahman did not visit his office. He denied the suggestion that he deposed falsely.

P.W. 3 Md. Abdus Salam Sarkar is the DGM (retired) of Jibon Bima Corporation, Dhaka. He stated that at the time of occurrence, he was the Assistant General Manager, Jibon Bima Corporation, Head Office, Dhaka. The accused Rafique Ahmed misappropriated the premium received from the policyholders for which departmental proceeding was initiated against him. He was the Enquiry Officer of the departmental proceeding. During the enquiry, it was proved that the

accused received the premium from the policyholders and misappropriated. On 14.07.2003, he submitted the report. During cross-examination, he stated that he was a member of the officer association and once he was the President of the said association. The complainants were present at the time of enquiry. Postal receipts were not attached along with the enquiry report. At the time of enquiry, the audit report was not submitted. He admitted that a few officers of the Trade Union, Chattogram Office used to receive money from the policyholder by printing PR books and they were punished. He denied the suggestion that he had intimate relationship with the officers of the trade union. He admitted that the name of the accused was included in the list of promotion to the higher post. He denied the suggestion that he submitted a false report.

P.W. 4 Ahmed Sagir is the Manager, Administration, Jibon Bima Corporation, Area Office, Chattogram. He stated that on 05.10.2004, he was the Manager of the Area Office, Jibon Bima Corporation, Chattogram. On that day, Inspector Aminur Rahman seized documents from his office and took his signature. The documents were given to the custody of Shafiqur Rahman.. He proved his signature as exhibit 3/2. During cross-examination, he stated that a copy of the receipt, hand receipt and other documents were seized. He denied the suggestion that at the time of the seizure, he was not present. He denied the suggestion that he used to claim gift and the accused refused for which he falsely deposed against him.

P.W. 5 Mizanur Rahman is the Deputy General Manager, Regional Office, Agrabad, Chattogram. He stated that on 05.10.2004, he was the Assistant Manager of the Regional Office. On that day, Inspector Aminur Rahman seized documents from the office. He signed the seizure list. He proved his signature on the seizure list as exhibit 3/3. During cross-examination, he stated that at the time of the seizure of the document, he was present. PR receipt, Insurance nothi and

statement of bank along with other documents were seized. He could not say whether the accused was rewarded for good service. He stated that the seized documents were not produced in Court. He denied the suggestion that there is an enmity between the accused and him for which he deposed falsely.

P.W. 6 Md. Shafiqur Rahman is the Assistant Manager (in charge) Jibon Bima Corporation, Chattogram. He stated that on 05.10.2004 at 9.30, the documents mentioned in serial Nos. 1-18 in the seizure list was given to his custody. He proved those documents as exhibits 15 to 32. On 07.10.2004 at 13.15 two records of the insurance policy were seized which are lying with him. Initially, Shafiqur Rahman was the custodian of those documents. He proved the records of two insurance policies as exhibits 33 and 34. The documents seized on 06.10.2004 at 12.00 were given to the custody of Sagir which was subsequently given to his custody. He proved those documents as exhibits 35 and 36. During cross-examination, he stated that he heard that the accused received the premium and misappropriated without depositing against the policy. The policyholders made the allegation. He denied the suggestion that without knowing anything he deposed falsely.

P.W. 7 Md. Rashedul Bari was a clerk of Zia and Brothers at the time of occurrence. He stated that he is a policyholder. After payment of the premium, he received the money of the insurance policy. No one misappropriated the premium of his policy.

P.W. 8 Md. Shamsuddin Ahammad is an Inspector, C.I.D, Chattogram Branch. He stated that on 15.11.2009, he was the Sub-Assistant Director, Anti-Corruption Commission, Chattogram-1. The Anti-Corruption Commission, Dhaka vide memo dated 15.11.2009 and memo dated 14.07.2009 issued by the Office of the Chattogram Division, appointed him as Investigating Officer. On 15.11.2009, he took up investigation of the case. He proved the said memos as exhibits

37 and 38. During the investigation, he found that while the accused was discharging his duty as Deputy Manager (Sales), Jibon Bima Corporation, Chattogram in 1999, he received total Tk.58,962 as premium from the policyholders and misappropriated said amount without depositing the premium against the policy. The Inspector Aminur Rahman of the Anti-Corruption Bureau after enquiry lodged the FIR and he investigated the case. During the investigation, he recorded the statements of witnesses and seized documents. After concluding the investigation, he found the truth of the allegation of misappropriation of Tk. 7,377.50 against the accused and submitted memo of evidence to file charge sheet under Section 409 of the Penal Code, 1860 read with Section 5(2) of the Prevention of Corruption Act, 1947. Thereafter, he was transferred and handed over the records to the Deputy Director, Anti-Corruption Commission, Chattogram-1. During cross-examination, he stated that at the time of investigation, he did not peruse the annual audit report of the Jibon Bima Corporation. He recorded the statement of the policyholders. The previous Investigating Officer seized the deposit slip. Ledger was seized to show that the accused did not deposit the premium recovered from the policyholder. He could not say from which division the policyholder Azizul Haque received his policy. He did not receive any information whether Azizul Haque received the premium from the accused with the approval of the authority. He investigated the case from 15.11.2009 to 31.05.2010. He recorded the statement of the policyholder Sarwar. The previous Investigating Officer seized the documents of the departmental enquiry and he perused those documents. The premium of ten receipts was misappropriated and he perused those receipts. The handwriting on the receipts was not sent for expert opinion of the handwriting expert to identify the signature of the accused. He affirmed that no complaint was received from the policyholders that their money was

misappropriated. He denied the suggestion that he submitted a report as he wished without any investigation.

P.W. 9 Md. Fakhru Islam is the Assistant Director of the Anti-Corruption Commission, Combined Office, Noakhali. He stated that from December 2009 to April 2016, he was the Deputy Assistant Director of the Anti-Corruption Commission, Combined Office, Chattogram-1. During his tenure, the Anti-Corruption Commission, Head Office vide memo No. 12412 dated 30.06.2010 appointed him as the Investigating Officer of the case. He received the record from the previous Investigating Officer Md. Shamsuddin Ahmad. Based on the memo of evidence submitted by Md. Shamsuddin Ahmad, the Anti-Corruption Commission, Head Office by memo dated 14.06.2010 had approved to submit two charge sheets and accordingly, he submitted charge sheets No. 370 and 370/Ka on 29.09.2010. The defence declined to cross-examine P.W. 9.

Learned Advocate Mr. Abdus Salam Mamun appearing along with learned Advocate Mr. Ahsanul Hoque (Liton) on behalf of the appellant submits that the accused was the Deputy Manager, Sales, Jibon Bima Corporation, Chattogram and the premium was received by the representative of Jibon Bima Corporation. The prosecution did not send the two money receipts (exhibits 7 and 8) to the handwriting expert to ascertain the alleged signature of the accused on those exhibits which are not the signature of the accused and the trial Court without any evidence convicted the accused. No document was proved by the prosecution that the accused received the premium from the policyholders. The trial Court without any evidence illegally passed the impugned judgment and order convicting the appellant. Therefore, he prayed for acquittal.

Learned Advocate Ms. Quamrun Nessa appearing on behalf of respondent No. 2 submits that the accused by issuing money receipts on 24.06.1999 (exhibit 7) received Tk. 3,560 from the policyholder No.

1084340-7 by issuing money receipt No. Cha 266872 and on 18.01.1999 received Tk. 3,817.50 from the policyholder Shahadat Hossain, Policy No. 1016853-2 and without depositing the said premium against the said policies misappropriated total Tk. 7,377. The prosecution witnesses proved the charge against the accused beyond all reasonable doubt.

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, perused the evidence, impugned judgment and order passed by the trial Court and the records.

On scrutiny of the judgment passed by the trial Court, it reveals that the trial Court convicted the accused on the findings that the accused Md. Rafique Ahmed received Tk. 3,560 on 24.06.1999 from the policyholder Shahadat Hossain against insurance policy No. 1084340-7 by money receipt No. Cha 266872 (exhibit 7) and Tk. 3,817.50 on 18.01.1999 from the policyholder Shahadat Hossain against the insurance policy No. 1016853-2 (exhibit 8) but he did not deposit the said premium in the policy ledger (exhibit 13) and the premium register and misappropriated total Tk. 7,377.

The accused is admittedly the Deputy Manager, Sales, Jibon Bima Corporation, Chattogram. On perusal of the money receipt No. Cha 266872 (exhibit 7) and a draft receipt dated 18.01.1999 (exhibit 8), it reveal that exhibit 7 was issued by the cashier and another Officer of Jibon Bima Corporation. The officer who issued the exhibit 7 also issued the draft money receipt dated 18.01.1999 (exhibit 8). During the investigation of the case, the signature of the officer who issued exhibits 7 and 8 were not sent to the handwriting expert for his opinion to ascertain that the accused Md. Rafique Ahmed issued those money receipts (exhibits 7 and 8).

On examination of the signature of the accused on the vokatnama filed before this Court and the signature of the officer who issued exhibits 7 and 8, it is found that the signature of the accused on the vokatnama is not identical to the alleged signature of the accused on exhibits 7 and 8. There is no seal of the officer who issued the exhibits 7 and 8. The Investigating Officer did not implicate the cashier as accused in the charge sheet who issued the money receipt No. Cha 266872 (exhibit 7). In the absence of expert opinion, it cannot be said that the accused issued the money receipts dated 04.06.1999 and 18.01.1999 (exhibits 7 and 8). Furthermore, no policyholders made any allegation that he deposited the premium to the appellant and he misappropriated the premium recovered from him. P.W. 7 Md. Rashedul Bari is a policyholder and he stated that no one misappropriated the premium of his policy.

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 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.