

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 6835 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 and 15.12.2024

Judgment delivered on 17.12.2024

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. 05 of 2013 arising out of Kotwali Police Station Case No. 41 dated 25.07.2004 corresponding DAB GR No. 27 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 01(one) year and fine of Tk. 5,000, in default, to suffer rigorous imprisonment for 01(one) month and confiscating the misappropriated amount of Tk. 51,585 in favour of the State.

The prosecution case, in short, is that the accused Md. Rafique Ahmed was the Deputy Manager (Sales) of Jibon Bima Corporation, Chattogram. He received total Tk. 58,962.50 from policyholders (1) Md. Shahadat Hossain, Insurance Policy No. 1016853-2 and Insurance

Policy No. 1084340-7, (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. Jashim Uddin, Insurance Policy No. 2302127-2 and (7) Md. Rashedul Bari, Insurance Policy No. 2302126-7. After recovery of the premiums from the said policyholders, the accused misappropriated total Tk. 58,962.50 without depositing the premium against the respective insurance policy of the said policyholders.

P.W. 1 Md. Aminur Rahman, Assistant Director, ACC, Combined District Office, Jessore took up the investigation of the case. During the investigation, he seized documents and recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898 and he was transferred. After that, P.W. 8 Md. Fakhrul Islam, Deputy-Assistant Director of ACC, Combined District Office, Dhaka-2 took up investigation of the case and after completing investigation submitted charged sheet on 06.10.2015 against the accused 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 to the 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 transferred the case to the Divisional Special Judge, Chattogram for trial and disposal. 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 and claimed to be tried following the law. The prosecution examined 8(eight) 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 he declined to adduce any D.W. 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 he filed the instant appeal.

P.W. 1 Md. Aminur Rahman is the Assistant Director, ACC, 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 an Inquiry Officer to enquire about the Nothi No. 87/03 (Ta:Fo:-1). During enquiry on 20.04.2004 at 12.30 noon he seized documents from Manjurul Islam, 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. He handed over the seized documents to the custody of said Manjurul Islam. During enquiry, he found that the accused Rafique Ahmed misappropriated total Tk. 7,08,238.50 for which he submitted the year-wise report against him. From 18.01.1999 to 05.02.2000, the accused Md. Rafique Ahmed as Deputy General Manager (Sales) of Jibon Bima Corporation, Chattogram received total premium of Tk. 51,585 from the policyholders and misappropriated. He lodged the FIR. He proved the FIR as exhibit 2 and his signature on the FIR as exhibit 2/1. He was also appointed as Investigating Officer and he partly conducted the investigation. During the investigation, on 05.10.2004 he seized 18 items of documents. He proved the seizure list as exhibit 3 and his signature on the seizure list as exhibit 3/1. He handed over the seized documents to the custody. On 06.10.2004 at noon, he seized documents from Ahmed Sagir and prepared the seizure list. 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 Ahmed Sagir. He proved the seizure list as exhibit 5 and his signature on the seizure list as exhibit 5/1. He handed over the documents seized

on the basis of the seizure list (exhibits 4 and 5). On 08.10.2004 he seized 8 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 documents to the subsequent Investigating Officer. In the meantime, the Bureau of Anti-Corruption was abolished and after the creation of the Anti-Corruption Commission, he handed over the documents to the newly appointed Investigating Officer. During cross-examination, he stated that during the enquiry, he did not visit the Office of the Jibon Bima Corporation, Divisional Office, Chattogram and he did not seize the annual audit report of the Jibon Bima Corporation. He did not record the statement of policyholders. He denied the suggestion that without any investigation he submitted the report following the records of the departmental enquiry. On recall, he proved the documents seized on 08.10.2004 as exhibits 7 to 14. He denied the suggestion that he deposed falsely against the accused.

P.W. 2 Mohammad Shah Alam is the Junior Officer, Jibon Bima Corporation, Head Office, Dhaka. He stated that on 20.04.2004 he discharged his duty as Upper Division Assistant of Jibon Bima Corporation. On that day, Inspector Aminur Rahman of the Bureau of Anti-Corruption seized the records of the departmental case initiated against the accused Rafique Ahmed. He signed the seizure list. He proved his signature on the seizure list as exhibit 1/2. He denied the suggestion that Inspector Aminur Rahman did not visit his office.

P.W. 3 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 General Manager, Jibon 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 sent notice to the accused Rafique Ahmed. During enquiry of the departmental case, he

found the truth of the allegation against the accused Rafique Ahmed and submitted the report on 14.07.2003 against him. During cross-examination, he admitted that there is a Trade Union in the Jibon Bima Corporation and he was the President of the said Union. The complainants were present at the time of enquiry. The accused was not present during the enquiry. At the time of enquiry, the audit report was not submitted. He admitted that the few Officers of the Jibon Bima Corporation, Divisional Office, Chattogram having published the PR book used to receive premiums from the policyholders for which they were punished. He admitted that in 2001 the name of the accused was included in the fit list for promotion. He denied the suggestion that he deposed falsely.

P.W. 4 Ahmed Sagir is the Manager of Jibon Bima Corporation. He stated that on 05.10.2004, he discharged his duty as Manager of Jibon Bima Corporation, Area Office, Chattogram. On that day, Inspector Aminur Rahman seized documents from the office and took his signature. He proved his signature as exhibit 3/2. The seized documents were handed over to the custody of Shafiqur Rahman. During cross-examination, he stated that the PR receipt, hand receipts and other documents were seized. He denied the suggestion that he was not present at the time of the seizing documents.

P.W. 5 Mizanur Rahman is the Deputy Manager of Jibon Bima Corporation. He stated that on 05.10.2004, he was the Assistant Manager of the Regional Office. On that day, Inspector Aminur Rahman visited his office and seized documents and took his signature. He proved his signature on the seizure list as exhibit 3/3. During cross-examination, he stated that the PR receipt, insurance record and the statement of bank deposits were seized. He could not say whether the accused was rewarded for his job. He denied the suggestion that he deposed falsely.

P.W. 6 Md. Shafiqur Rahman Khan is the Assistant Manager (In-charge). He stated that on 05.10.2004 at 09.30, the seized documents were given to his custody. He produced and proved those documents as exhibits 15 to 23. The documents seized on 06.10.2004 at noon were handed over to his custody. Initially, those documents were given to the custody of Shaifiquir Rahman. He proved those documents as exhibits 24 and 25. The documents seized on 07.10.2004 at 13.35 were given to the custody of Ahmed Sagir. Subsequently, those documents were handed over to his custody. He proved those documents as exhibits 26 and 27. During cross-examination, he stated that he heard that the accused misappropriated the premium. The policyholders made the allegation. He denied the suggestion that he deposed without knowing anything.

P.W. 7 Md. Rashedul Bari is an employee of Zia and Brothers. He stated that at the time of the occurrence, he opened a policy with the Jibon Bima Corporation and after five years, he withdrew the money. None misappropriated his premium.

P.W. 8 Md. Fakhrul Islam is the Sub-Assistant Director, ACC, Combined District Office, Dhaka-2. He stated that from 27.12.2010 to 13.05.2013, he discharged his duty as Sub-Assistant Director of ACC, Combined District Office, Chattogram. The previous Investigating Officer submitted the memo of evidence. He received the approval contained in memo No. 11265 dated 14.06.2010. He proved his signature as exhibit 28. Based on the investigation made earlier, he submitted charge sheet. He admitted that he did not investigate the case.

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 of Sales of Jibon Bima Corporation, Chattogram and the alleged money

receipts issued in favour of policyholder Md. Shahadat Hossain were not proved in the case. All the money receipts (exhibits 9 to 14) are the photocopy of the original. He further submits that the money receipts issued in favour of the policyholders 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 following the correct principle of appreciation of evidence and illegally convicted the accused. Therefore, he prayed for allowing the appeal.

Learned Advocate Ms Quamrun Nessa (Ratna) appearing on behalf of respondent No. 2, Anti-Corruption Commission, submits that the accused received total Tk. 58,962.50 from seven policyholders and the accused admitted his signature on the money receipts and the prosecution proved the misappropriation of premium total Tk. 58,962.50 against the accused beyond all reasonable doubt. 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.

In the FIR, it has been alleged that the accused Md. Rafique Ahmed received Tk. 3,817.50 on 18.01.1999 from the Policyholder Md. Shahadat Hossain against the Insurance Policy No. 1016853-2 by handslip and Tk. 3,560 by Money Receipt No. 266872 dated 24.06.1999 against Insurance Policy No. 1084340-7, Tk. 6670 by handslip dated 28.12.1999 from the Policyholder Khursheda Yeasmin as premium against the Insurance Policy No. 1082487-8, Tk. 6,960 by handslip dated 18.01.2000 from the Policyholder Md. Ishaque against

the Insurance Policy No. 1043431-4, Tk. 13,140 by hardship dated 18.01.2000 from the Policyholder Sayedul Haque against his Insurance Policy No. 1046274-5, Tk. 17,760 by handslip dated 28.01.2000 from the Policyholder Md. Zaker Hossain against the Insurance Policy No. 0186185-5, Tk. 3,535 by hardship dated 05.10.2000 from the Policyholder Md. Jasim Uddin against the Insurance Policy No. 2302127-2 and Tk. 3,520 by hardship dated 05.02.2000 from the Policyholder Md. Rashedul Bari against the Insurance Policy No. 2302126-7. The accused received total Tk. 58,962.50.

During the trial, none of the policyholders were examined in the case. The photocopy of money receipt issued in favour of Khursheda Yeasmin was proved as exhibit 9, photocopy of money receipt issued in favour of Md. Ishaque was proved as exhibit 10, the photocopy money receipt issued in favour of Sayedul Haque was proved as exhibit 11, photocopy of money receipt issued in favour of Md. Zaker Hossain was proved as exhibit 12, photocopy of money receipt issued in favour of Md. Jashim Uddin was proved as exhibit 13 and a photocopy of the money receipt issued in favour of Md. Rashedul Bari was proved as exhibit 14. The alleged money receipt issued in favour of policyholder Md. Shahadat Hossain was not proved in the case. None of the witnesses proved the original money receipts issued in favour of said policyholders. During the investigation, the money receipts issued in favour of the policyholders were not sent to the handwriting expert to ascertain the signature of the officer who issued the money receipts (exhibits 9 to 14). Furthermore, there is no official seal of the accused on the said money receipts (exhibits 9 to 14).

It is found that the documents of departmental proceedings initiated against the accused were proved in 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 the

concerned authority. The alleged money receipts (exhibits 9 to 14) were delivered to the policyholder. Since the alleged signature of the accused on the money receipts (exhibits 9 to 14) were 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 and he issued the money receipts. No other money receipt was proved by the prosecution.

Because of the above evidence, findings, observation and proposition, I am of the view that the prosecution failed to prove the charge against the accused to the hilt beyond all reasonable doubt and the trial Court without correct assessment and evaluation of the evidence illegally arrived at a wrong decision as to the guilt of the accused.

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.