IN THE HIGH COURT OF SINDH AT KARACHI

Before:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Khalid Hussain Shahani

Criminal Accountability Appeal No.11 of 2021

Appellants	:	1. Aftab Hasan S/o Shams ul Hassan (Died) 2. Mohammad Salim Yousuf *Through* Mr. Muhammad Sarfaraz Metlo, Advocate

Criminal Accountability Appeal No.17 of 2021

Appellant	:	Syed Muhammad Furqan S/o Nisar Hussain *Through* Syed Asadullah Shah Rashdi, Advocate

Criminal Accountability Appeal No.24 of 2021

Appellant	:	Rasheed Ahmed S/o Fareed Ahmed *Through* Mr. Javed Anwar, Advocate
Respondent	:	The State *Through* Ms. Saeeda Khurshid & Syed Khurram Kamal, Special Prosecutor NAB duly assisted by Mr. Irshad Ali, Asst. Attorney General and.
Date of hearing	:	01.09.2026
Date of judgment	:	01.09.2026

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. By this common judgment we propose to decide Criminal Accountability Appeals Nos. 11, 17 and 24 of 2021, all arising out of Reference No. 05 of 2012 and directed against the judgment dated 30th March 2021 rendered by the learned Judge, Accountability Court No. IV, Sindh at Karachi. Since the appeals spring from one reference, rest upon a common evidentiary record and assail a single judgment, their consolidated determination is not merely convenient but necessary to avoid discordant appraisal of the same transaction. The appellants were convicted for corruption and corrupt practices falling within Section 9(a), read with Section 10(a), of the National Accountability Ordinance, 1999 (“the Ordinance”), and were each sentenced to rigorous imprisonment for seven years with fine of Rs.150 million; in default of payment of fine, to further undergo rigorous imprisonment for six months. Benefit under Section 382-B, Cr.P.C. was extended and recovery of fine was directed in accordance with Section 33-E of the Ordinance.

2. During pendency of these proceedings, appellant Aftab Hassan son of Syed Shams-ul-Hassan expired. The consequence of his death, the subsistence or otherwise of the appeal insofar as the pecuniary component of sentence is concerned, and the protection of his legal estate are dealt with separately in the concluding part of this judgment. References hereafter to “the surviving appellants” mean Muhammad Saleem Yousuf, Syed Muhammad Furqan and Rasheed Ahmed.

3. The genesis of the Reference is that Eastern Capital Limited ("ECL") was a brokerage house and a participant account-holder in the Central Depository System. Complaints reached the Securities and Exchange Commission of Pakistan ("SECP") toward the end of 2008 that ECL was failing to settle investors' claims and that securities standing in clients' CDC sub-accounts had been moved without authority, pledged with banks, transferred to other accounts or parked in accounts associated with the late Abu Bakar Siddiq. The regulatory inquiry asserted that ECL had pledged client securities to secure banking facilities that the lending banks subsequently sold securities toward their outstanding exposure, and that clients thereby suffered loss.

4. The prosecution case, in its broad formulation, was that the persons managing ECL had handled investors' securities without the written authority or consent contemplated by sections 12 and 24 of the Central Depositories Act, 1997; moved shares from client sub-accounts to ECL's main account or to accounts maintained in the name of Abu Bakar Siddiq; procured financial accommodation against those shares; and conferred undue advantage upon connected persons. The reference quantified one component at Rs.312.255 million and a further component at Rs.268.462 million, aggregating Rs.580.717 million. The latter figure was linked principally to twelve accounts said to have received favourable treatment, including accounts associated with Munir Ladha and the late Abu Bakar Siddiq.

5. SECP initially filed Direct Complaint No.314 of 2010 before the Sessions Court under provisions of the Central Depositories Act, 1997 and the Pakistan Penal Code. During those proceedings an application under section 16-A(a) of the Ordinance was allowed on 19 May 2012, whereupon the matter was transferred to the Accountability Court and registered as Reference No.05 of 2012. NAB's subsequent investigation substantially adopted and enlarged upon the SECP inquiry.

6. The prosecution attributed differing positions to the appellants. Aftab Hassan and Muhammad Saleem Yousuf were alleged to have served as directors; Syed Muhammad Furqan was described by the prosecution as a director/sponsor/representative, though he maintained that he was merely a paid General Manager, Administration and Human Resources; and Rasheed Ahmed maintained that he entered ECL as an information-technology consultant, later served in operational and internal-audit functions, and was only shown as director for a brief period when the market was under restraint. The gravamen of the charge was nevertheless framed jointly: that the accused, acting in collusion and connivance with the Ladha management and other persons, abused their respective authority, facilitated unauthorized movement and pledge of securities, caused wrongful loss to investors and failed to prevent or render the benefit which their authority enabled them to prevent or render.

7. The original charge was framed during the transferred proceedings and an amended charge was framed on 9th December 2014. The accused pleaded not guilty and claimed trial. The prosecution examined twenty-six witnesses, including SECP inquiry officers, complainants and investors, representatives of CDC, Karachi Stock Exchange and banks, and NAB investigating officers. The Court also examined two witnesses. Upon closure of the prosecution case, each accused was examined under Section 342, Cr.P.C.; one defense witness was produced.

8. The learned trial Court acquitted Asif Kudia, Muhammad Aslam, Muhammad Siddique Siddiqy, Mst. Shahla Iftikhar, Syed Shahzad Ali Bukhari, Munir Ahmed and Mst. Farhat Parveen pursuant to Section 265-H(i), Cr.P.C. It convicted the present appellants. In substance, it treated their proved or admitted corporate offices, shareholding, their association with ECL, the corporate forms and guarantees attributed to them, and the surrounding pattern of unauthorized dealings as sufficient to infer knowledge, facilitation and culpable participation. Paragraphs 50 to 61 of the impugned judgment discussed the respective positions of the convicted persons and the mechanics of the misconduct.

9. Applications for suspension of sentence were pursued. By order dated 5th May 2021 in Constitutional Petition No.D-2332 of 2021, a Division Bench declined suspension after observing that the role attributed to the petitioners and the documents bearing their signatures prima facie disclosed nexus; it correctly refrained from conducting the deeper reappraisal reserved for the appeals. That interlocutory assessment neither forecloses nor predetermines the present final scrutiny.

10. Mr. Metlo, learned counsel for the appellants in Crl. Acctt. Appeal No.11 of 2021 argued that the conviction rests upon status rather than conduct. They emphasized that the SECP complaint was received at the end of 2008; that the corporate record showed their resignations on 10th and 13th September 2008 respectively and appointment of successors; that they were not authorized signatories of ECL's bank accounts or CDC operations; and that none of the claimants named either of them. Reliance was placed on admissions of PW-1 Muhammad Noman Akhtar, PW-2 Muhammad Shamaoun and PW-4 Ahsan Aslam that the record did not show them transferring shares, taking undue advantage, receiving proceeds, providing benefit to friends or relatives, or being named by complainants. It was urged that no separate NAB investigation report was prepared against them and that the inquiry materials, without proof of authorship and contents, could not substitute substantive evidence. Learned counsel further submitted that the amended charge was omnibus and failed to specify the date, account, instrument, authority or overt act referable to each appellant. According to counsel, a penal finding under Section 9(a) could not arise merely from directorship, nor could a collective charge relieve the prosecution of proving entrustment, dominion, and dishonest conversion, abuse of a particular authority, *mens rea* and causative nexus.

The acquittal of several co-accused on the same record was invoked as demonstrating discriminatory appraisal. The trial Court was also criticized for drawing incriminating conclusions from answers under Section 342, Cr.P.C. without first proving the underlying documents.

11. For Syed Muhammad Furqan it was argued that he was a paid employee, not a directing mind of ECL; that he served in administration and human resources after retirement from the Pakistan Army; that he was on forced leave from 1st February 2008 and resigned in December 2008; that a disputed guarantee/signature was never sent to a handwriting expert; and that his nominal holding of 650 shares, stated to represent about 0.02 per cent, did not prove beneficial participation. Counsel invoked acquittals in Banking Court Criminal Complaint No.32 of 2009 and in Special Court (Offences in Banks) Case No.14 of 2012, contending that a second prosecution on the same essential allegations offended Section 403, Cr.P.C. and constitutional protection against double jeopardy. Learned Counsel for Furqan also assailed the examination under Section 342, Cr.P.C. as compound, vague and devoid of particulars. He submitted that the prosecution proved neither an account controlled by Furqan, a share moved on his instruction, a loan obtained for him, nor any asset disproportionate to his means. The substantive perpetrators, namely the principal Ladha management, remained absconding. The conviction of an employee, without proof of an overt act or benefit, was characterized as impermissible vicarious criminal liability.

12. For Rasheed Ahmed, learned counsel submitted that he joined ECL as an IT consultant in 2002, later served as IT Manager, Manager Operations and Chief Internal Auditor, and was shown as Chief Operating Officer only near the suspension of the brokerage house. It was maintained that he was an employee rather than a beneficial owner; that Form-A, Form-28 and Form-29 establishing directorship were not properly produced; that he was not an authorized signatory for bank, CDC or KATS transactions; that no client lodged a complaint against him; that no share or money came to him; and that the investigating officer admitted the absence of direct or indirect evidence of his participation. His income-tax and banking material was relied upon to show salary income rather than criminal enrichment. Learned counsel also relied upon his client's acquittal in the Banking Court matter and the order dated 21st October 2021 of the Special Court (Offences in Banks), whereby he, Asif Kudia and Syed Muhammad Furqan were acquitted under Section 249-A, Cr.P.C. It was argued that the share market remained frozen during the latter part of 2008 and that no transaction was established during the short period in which he was allegedly a director. Learned counsel accordingly prayed for outright acquittal of every appellant.

13. Collectively, defense counsel invoked the presumption of innocence, the prosecution's unshifting initial burden, the rule that documentary contents and signatures must be proved through legally admissible evidence, the prohibition

against using a statement under Section 342 as an independent substitute for prosecution evidence, the need to extend benefit of a single reasonable doubt as a matter of right, and the distinction between civil or regulatory default and criminal breach of trust. In the alternative, without prejudice to the prayer for acquittal, counsel sought reduction of sentence on account of the appellants' age; prolonged proceedings, custody already undergone, absence of personal enrichment, subordinate or transient roles and the time elapsed since the events of 2008.

14. Conversely, learned Special Prosecutor, NAB, supported the impugned judgment. He submitted that the defence had fragmented a concerted corporate fraud into isolated acts and then demanded an eyewitness to each electronic movement. The prosecution case, according to him, was founded upon an integrated documentary trail: client complaints, CDC account activity and pledge reports, back-office record, corporate returns, board material, banking instruments and guarantees. These materials showed a sustained system in which investors' securities were removed from the protective confines of their sub-accounts, consolidated or parked, pledged for ECL's liabilities, and ultimately exposed to sale by lending banks. He also argued that personal receipt of the proceeds is not an indispensable ingredient of every species of corruption and corrupt practice charged under Section 9(a). A person occupying an office of responsibility may facilitate, permit or knowingly fail to prevent the grant of an undue benefit to another. The appellants' designations, signatures on corporate and banking instruments, shareholding, duration of association, access to institutional systems and failure to offer a credible contemporaneous explanation were said to form mutually reinforcing circumstances. Admissions elicited from individual witnesses, when severed from the documentary record and the totality of circumstances could not annihilate the prosecution case. As to the related banking cases, it was submitted that those proceedings arose under different enactments, involved different complainants, ingredients and evidentiary settings, and did not adjudicate the entirety of the abuse of investor securities forming the subject of the accountability reference. Neither Section 403, Cr.P.C. nor the constitutional rule against double jeopardy was therefore attracted. The Prosecutor maintained that the sentence was lawful and proportionate to the scale of public loss, though he left any adjustment warranted by custody and passage of time to the Court's discretion.

15. Upon the pleadings, record and submissions, the following questions require determination:

i) Whether the amended charge, read with the reference and material supplied to the accused, conveyed with sufficient certainty the nature of the accusation, and whether any deficiency occasioned a failure of justice?

ii). Whether the prosecution proved, through admissible direct and circumstantial evidence, the underlying unauthorized movement and pledge of investors' securities and the consequent wrongful loss/undue benefit?

iii). Whether the individual nexus, knowledge, authority and participation of each surviving appellant were proved beyond reasonable doubt, or whether the conviction rests upon impermissible vicarious liability arising from employment, directorship or association alone?

iv). What is the legal effect of the admissions obtained in cross-examination, the appellants' statements under section 342, Cr.P.C., and the objection regarding proof of documentary instruments and disputed signatures?

v) Whether the earlier Banking Court and Special Court acquittals bar or materially undermine the present convictions?

vi). Whether the impugned judgment suffers from misreading, non-reading, perversity or legal error warranting appellate interference with conviction?

vii). If conviction is maintained, whether the custodial sentence requires modification, and what is the consequence of Aftab Hassan's death during pendency of appeal?

16. It is settled principle of law that a criminal appeal against conviction is a continuation of the trial and entails an independent, conscious reappraisal of the entire material. The appellate Court must determine whether each essential ingredient was proved beyond reasonable doubt, while giving due weight, not blind deference to the advantage enjoyed by the trial Judge. Interference is warranted where material evidence has been ignored, inadmissible material has supplied the foundation of guilt, conclusions are conjectural, or the view adopted is not reasonably sustainable. Conversely, an appellate Court does not displace a lawful conviction merely because another view of an isolated circumstance is conceivable.

17. The burden begins and remains upon the prosecution until it establishes the foundational facts and statutory ingredients. Section 14(c) of the Ordinance does not authorize conviction by presumption in a factual vacuum. The ratio in PLD 2005 Supreme Court 63[1], and 2009 SCMR 790[2], is that the special presumption operates only after the prosecution has proved facts capable of sustaining the statutory inference; an accused is not required to prove innocence before that stage. We apply that rule and have not treated any silence or imperfection in defence as curing a missing element in the prosecution case.

18. The concept of criminal breach of trust requires entrustment or dominion and dishonest misappropriation, conversion, use or disposal contrary to the governing direction, law or contract. The decision in 2015 SCMR 1575[3], emphasizes that a contractual or civil dispute, without the requisite dishonest element and legally cognizable entrustment, cannot be transformed into an accountability offence.

[1] Pir Mazhar-ul-Haq and others v. The State through Chief Ehtesab Commissioner
[2] Syed Qasim Shah v. The State
[3] Rafiq Haji Usman v. Chairman, NAB

Likewise, in 2011 SCMR 1614[4], distinguishes money paid in fulfilment of a sale or contractual bargain from property entrusted for a defined purpose. Those principles are unexceptionable. Their application, however, turns upon substance: client securities retained by a regulated broker in custodial sub-accounts and statutorily protected against unauthorized handling are not analogous to an ordinary unpaid contractual debt. Their diversion and pledge, if knowingly facilitated, are capable of constituting dishonest abuse rather than mere breach of contract.

19. There is no general doctrine of vicarious criminal liability. Corporate office, designation or shareholding, without proof of the accused's own act, knowledge, consent, connivance, wilful omission or statutory responsibility, cannot sustain conviction. At the same time, concert and culpable facilitation are commonly proved circumstantially. In an electronically executed corporate scheme, the law does not insist upon ocular testimony of keystrokes. Authority, access, authenticated instruments, continuity of conduct, knowledge of irregular operations, deliberate facilitation and benefit to connected persons may collectively prove participation. The Court must, however, individualize that inference and guard against replacing proof with hierarchy.

20. Documentary evidence must be proved in the manner required by the Qanun-e-Shahadat Order, 1984. Mere production does not prove execution, signature or truth of contents. 2021 YLR 1464 (Sindh)[5], applied that rule to unverified signatures on bank documents and set aside conviction where the prosecution neither produced responsible bank witnesses nor obtained forensic verification. 2017 SCMR 172[6], similarly reiterates that a document cannot form the basis of adjudication unless duly proved. The applicability test is decisive: where a conviction depends exclusively upon a denied signature left wholly unproved, those authorities control; where corporate records are produced through competent custodians, corroborated by admitted office, surrounding instruments and independent account activity, the Court assesses the cumulative proved facts and excludes only the unproved signature.

21. The statement under Section 342, Cr.P.C. is meant to afford a fair opportunity to explain incriminating circumstances. 2010 SCMR 1009[7], teaches that every material incriminating circumstance intended to be used must be distinctly put to the accused. Such statement is not evidence for the prosecution and cannot supply a lacuna; yet an admission voluntarily made concerning a matter within personal knowledge may be considered with the proved evidence. A compound or vague question cannot found guilt, and an explanation not demonstrably false cannot be converted into corroboration. We have accordingly ignored any circumstance not

[4] Shahid Imran v. The State
[5] Aleemuddin and others v. The State (NAB)
[6] Province of the Punjab through Collector, Sheikhupura v. Syed Ghazanfar Ali Shah and others
[7] Muhammad Shah v. The State,

fairly put and have not treated an equivocal answer regarding a signature as primary proof of execution.

22. The rule of benefit of doubt, restated in 2020 YLR 1388 (Sindh)[8], is not a concession: one reasonable doubt arising from a material circumstance entitles an accused to acquittal as of right. But doubt must be reasonable, judicial and rooted in the evidence; it is not generated by dissecting an interlocking chain into artificial compartments. Omissions in expert comparison, absence of personal recovery and exculpatory parts of cross-examination must therefore be weighed against, not outside, the proved corporate and transactional circumstances.

23. The underlying misconduct at ECL was proved independently of the appellants' individual liability. The CDC structure placed clients' beneficially owned securities in protected sub-accounts. The prosecution record, through CDC and regulatory witnesses, account activity and pledge material, established movement of securities outside those sub-accounts without the written authority contemplated by law, their aggregation in ECL-controlled or associated accounts, their pledge to secure ECL exposure and eventual sale by banks. The back-office record and claims confirmed disparities. This was neither a bookkeeping irregularity nor a mere inability to honour a commercial obligation; it was the deployment of custodial assets for an unauthorized corporate purpose.

24. The criticism that no complainant named every appellant is relevant but not conclusive. Investors could testify that they did not authorize transfer and that their securities disappeared; they were not expected to know which officer executed an internal electronic or banking step. Similarly, the absence of a credit into an appellant's personal account disproves one mode of enrichment but not knowing assistance in securing an undue advantage for ECL or associated beneficiaries. The learned trial Court did not convict merely because loss occurred. It connected the surviving appellants with corporate offices, instruments and functions operating during material portions of the scheme.

25. As regards Muhammad Saleem Yousuf, the defense established resignation in September 2008 and absence of proof of personal receipt. Those circumstances limit the temporal and beneficial dimensions of his role. They do not erase the period of his directorship, the institutional responsibilities and documents considered by the trial Court, or the evidence that the unauthorized arrangement was already embedded before formal resignation. A director cannot be convicted merely for failing to detect wrongdoing; here, however, the proved circumstances were capable of supporting the conclusion that his association went beyond innocent nonfeasance. The trial Court's inference, read as a whole, is a reasonably available inference and not perversity.

[8] Muhammad Shah and in Farrar Ahmed Baloch and another v. The State

26. Syed Muhammad Furqan's case required particular caution because his principal defence was that he was a paid employee in administration and human resources. His nominal shareholding and designation, standing alone, would plainly be insufficient. We also exclude any disputed signature not independently proved. Nevertheless, the record accepted by the trial Court included his senior managerial position during the operational period, corporate material associating him with responsible functions, and circumstances bearing upon guarantees and company affairs. His related acquittals do not determine the distinct charge examined here. Although the evidence does not demonstrate personal enrichment and is not of the same quality as that against the principal absconding management, it furnishes a legally sustainable circumstantial nexus sufficient to uphold the trial Court's conclusion of facilitation and culpable association.

27. Rasheed Ahmed's admissions and the prosecution admissions require equal care. It was acknowledged that he was not an authorized CDC or bank signatory, that no client directly complained against him, and that no personal account received the proceeds. The investigating officer also accepted that an IT employee could not, by that status alone, pledge shares. But Rasheed's own career history placed him successively in IT, operations, internal audit and senior operational management. Those functions supplied knowledge of the back-office and transaction architecture, and the corporate record placed him in a formal role during the terminal phase. The trial Court was entitled to evaluate these facts with the wider transactional evidence. The inference is not that every IT officer is liable; it is that this appellant's progression into operational and audit responsibility, coupled with the proved system and corporate circumstances, supported knowing facilitation. The short duration and absence of gain bear strongly upon sentence, not upon complete exoneration.

28. The appellants' acquittals in Banking Court Criminal Complaint No.32 of 2009 and in Special Court Case No.14 of 2012 were material and deserved express consideration. They are not, however, a legal bar. The former concerned the ingredients of section 20 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, including dishonest disposal of hypothecated receivables belonging to the complainant bank. The latter arose from an FIR and was terminated under section 249-A on the evidence and charge before that Court. The present reference addressed abuse of numerous investors' CDC securities and corruption and corrupt practices under the Ordinance. Identity of some background facts or documents does not establish identity of the offence, ingredients, victim interest and transaction necessary for Section 403, Cr.P.C. The applicability test for autrefois acquit is therefore not satisfied. The earlier acquittals nonetheless reinforce the conclusion that the surviving appellants were not principal beneficiaries and merit differentiation in punishment.

29. The amended charge was broad and inelegantly drafted. A charge in a complex financial prosecution should specify, so far as reasonably possible, the period, office, authority, account category, instrument and mode of participation attributed to each accused. Yet a defect does not nullify a concluded trial unless it misled the accused and occasioned failure of justice. The reference, inquiry material, witness depositions, documents put in cross-examination and detailed statements under section 342 demonstrate that each appellant understood the case and mounted a role-specific defence. No concrete defence shown to have been available was lost through the form of charge. The irregularity is thus curable and not fatal.

30. We have not relied upon the SECP or NAB inquiry reports as autonomous proof of guilt. Their function was narrative and investigative. The conviction is sustained upon the primary and corroborative material proved through the witnesses and the admissions legitimately usable against the maker. Nor have we treated the appellants' inability to disprove the case as discharging the prosecution burden. The foundational facts were first established; only then did the surrounding corporate circumstances assume evidentiary significance.

31. The trial Court's use of common language such as "jointly and severally" does not mean that it imposed civil-style collective liability. Read fairly, its judgment identified the operational scheme and then dealt with individual roles. Some reasons could have been more sharply expressed and the distinction between principal perpetrators and facilitators deserved greater prominence. Those deficiencies do not render the conclusion illegal. An appellate Court reviews the substance of adjudication, not its literary perfection. Upon independent reappraisal, we find no material misreading or non-reading that creates a reasonable doubt sufficient to overturn conviction.

32. The authorities cited for the defence have thus been applied, not merely recited. *Rafiq Haji Usman* and *Shahid Imran* do not govern because the case is not an ordinary contractual default; *Aleemuddin* would exclude an unproved disputed signature but does not erase independently proved corporate and transactional circumstances; *Pir Mazhar-ul-Haq* and *Syed Qasim Shah* require foundational proof before presumption, a threshold crossed here; *Muhammad Shah* excludes unput circumstances and prohibits using Section 342 as a prosecution substitute, a restriction we have observed; and *Farrar Ahmed Baloch* commands acquittal upon a single reasonable doubt, but no such doubt survives after cumulative appraisal of the admissible chain. The cited principles therefore discipline the route to decision without dictating acquittal on materially different facts.

33. So far sentence and proportionality are concerned punishment must reflect both the gravity of the offence and the degree of individual culpability. The loss to investors and abuse of a regulated custodial structure were grave. Yet sentencing cannot flatten the distinction between the controlling absconding management, direct

beneficiaries and employees or directors whose liability is founded on facilitation, knowledge or culpable omission. The surviving appellants have not been shown to have personally received the misappropriated amount; no disproportionate asset has been traced to them; their related proceedings have continued for many years; they have undergone substantial incarceration; and the occurrence belongs to 2008. Their ages, antecedents, roles and the ordeal of protracted litigation are legitimate sentencing considerations.

34. At the conclusion of the hearing, learned Special Prosecutor NAB, having regard to the period of incarceration already suffered by the appellants, the age of the prosecution, the differentiated nature of their participation and the circumstances appearing from the record, fairly proposed that the convictions be maintained but the substantive sentences be reduced to the periods already undergone. He further stated that the respondent would have no objection if the pecuniary component were reduced to the minimum amount considered lawful and appropriate by this Court. Learned counsel for the appellants, upon instructions, accepted the proposal and stated that, if the appeals were disposed of on those terms, they would not press the challenge to conviction and would confine their prayer to modification of sentence and minimum amount considered lawful and appropriate. Such concession, though relevant, does not bind the Court or relieve it of its independent duty to examine the legality, proportionality and propriety of the proposed disposition. Sentencing remains a judicial function, and the position adopted by the parties can only constitute a supporting circumstance in determining whether further punishment is necessary in the interests of justice.

35. The occurrence relates to the year 2008, and the appellants have remained subjected to investigation, trial, conviction and appellate proceedings for about eighteen years. The surviving appellants have already undergone substantial incarceration and there is no material showing that they are habitual offenders or that their continued detention is required for the protection of society. Although the offences involved serious misuse of a regulated financial and custodial structure and caused substantial institutional loss, the evidence did not establish that Muhammad Saleem Yousuf, Syed Muhammad Furqan or Rasheed Ahmed were the ultimate controlling minds or principal beneficiaries of the scheme. Nor was any identified portion of the misappropriated amount, or any asset acquired from its proceeds, traced to or recovered from them. Their culpability, sustained on the basis of their respective positions, access, facilitation, knowledge and culpable omissions, is not thereby extinguished; nevertheless, these circumstances materially distinguish their responsibility from that of the principal architects or direct beneficiaries. Punishment must remain individualized, and the gravity of the transaction cannot justify imposing identical consequences without regard to the different roles and benefits proved against

the respective offenders. Upon a cumulative assessment of their roles, the absence of proved personal enrichment, the incarceration already suffered, the antiquity of the occurrence, the prolonged proceedings, their antecedents and the fair position adopted by the learned Prosecutor, we are satisfied that no legitimate penal purpose would be served by their further confinement. The substantive sentence of seven years' rigorous imprisonment imposed upon the surviving appellants is, therefore, reduced to the period already undergone.

36. The learned trial Court had imposed a fine of Rs.150 million upon each appellant, with six months' rigorous imprisonment in default. Section 10(a) of the National Accountability Ordinance, 1999 continues to contemplate punishment with fine; however, Section 11, which formerly regulated the minimum quantum by reference to the gain derived by an accused, his relative or associate, was omitted by Section 7 of the National Accountability (Second Amendment) Act, 2022. Since the convictions and sentences remain under appellate scrutiny, the amended and ameliorative statutory position is relevant to their determination. The omission of Section 11 does not dispense with the fine contemplated by Section 10(a), but leaves its quantum to principled judicial discretion. Such discretion must be exercised with reference to the individual offender's culpability, role and proved benefit, and not merely by reference to the aggregate loss. The amounts of Rs.312.255 million and Rs.268.462 million, aggregating Rs.580.717 million, represent the alleged financial consequence of the entire enterprise and do not establish that each appellant personally obtained an equivalent or proportionate benefit. No intelligible calculation appears from the judgment or evidence by which Rs.150 million was individually attributed to each appellant. In the absence of proof of corresponding personal gain or possession of proceeds, the uniform fine assumed a compensatory character and operated as an indiscriminate substitute for recovery of the total loss, whereas restitution, forfeiture, recovery of proceeds and criminal punishment are distinct legal consequences. The fine must also be practically enforceable; otherwise, its default clause would indirectly prolong incarceration despite the conclusion that no further imprisonment is warranted. Parity requires like cases to be treated alike and materially different cases differently, not the mechanical imposition of an identical fine upon persons occupying different positions and performing different functions.

37. Complete remission of the fine would nevertheless be inappropriate, having regard to the seriousness of the corruption and corrupt practices proved and the substantial loss caused to investors and the institution concerned. Balancing the need for denunciation and deterrence against the absence of proof of individually quantified gain, the comparatively limited roles of the surviving

appellants, the non-recovery of proceeds-derived assets, the long period already spent in custody and the passage of time, we consider a fine of Rs.10,000 upon each appellant to be the minimum substantial pecuniary punishment capable of satisfying Section 10(a) without becoming oppressive or illusory. Accordingly, the fine of Rs.150 million imposed upon each appellant is reduced to Rs.10,000. The sentence of six months' rigorous imprisonment in default is set aside, as the reduced fine shall remain recoverable under Section 33-E of the National Accountability Ordinance, 1999 and other applicable provisions of law, without prejudice to any independently sustainable order of restitution, forfeiture or recovery of property proved to constitute proceeds of the offence. The concession of the learned Special Prosecutor and the acceptance by learned defence counsel have been taken into account as relevant circumstances, but the relief granted rests upon our independent assessment of the record, the amended statutory framework and the requirements of proportionality.

38. Aftab Hassan son of Syed Shams-ul-Hassan died during the pendency of Criminal Accountability Appeal No.11 of 2021. His appeal has abated to the extent of the substantive and default sentences of imprisonment, which were personal to him, but survives in respect of the fine insofar as it may affect his estate. For the reasons stated above, the fine imposed upon him is also reduced from Rs.150 million to Rs.10,000. Recovery thereof, if otherwise permissible, shall be confined exclusively to property forming part of his estate and shall not be enforced personally against any legal heir beyond the value of the estate inherited. The appeals of Muhammad Saleem Yousuf, Syed Muhammad Furqan and Rasheed Ahmed are dismissed insofar as they challenge their convictions under Section 9(a), read with Section 10(a), of the National Accountability Ordinance, 1999, but are partly allowed to the extent of sentence. Their substantive imprisonment is reduced to the period already undergone, inclusive of the benefit admissible under Section 382-B, Cr.P.C.; their fines are reduced to Rs.10,000 each; and the default sentences are set aside. They are present on bail. Theirs bail bonds stand cancel and surety discharged, subject to payment of fine as above. The office shall transmit a certified copy of this judgment to the learned Accountability Court concerned and the competent recovery authority for information and compliance. The appeals stand disposed of in the above terms.

J U D G E

J U D G E