

## **IN THE HIGH COURT OF SINDH AT KARACHI**

PRESENT:

***Mr. Justice Aftab Ahmed Gorar***  
***Mr. Justice Amjad Ali Sahito***

Criminal Appeal No.116 of 2019

Criminal Appeal No.123 of 2019

Appellant in Crl. Syed Nizam Mohiuddin Rafai  
Appeal No.116/2019 : Through Mr. Muhammad Jamil, Advocate

Appellant in Crl. Syed Junaid Ali Shah  
Appeal No.123/2019 : Through Mr. Amir Mansoob Qureshi,  
Advocate

Respondent : The State  
Through Mr. Nadeem Ahmed Khan,  
Assistant Attorney General.

Date of hearing : 03.04.2019, 17.04.2019 & 22.04.2019

Date of order : \_\_.04.2019

### **J U D G M E N T**

**AMJAD ALI SAHITO, J :-** Being aggrieved and dissatisfied with the judgment dated 16.02.2019 passed by the learned Presiding Officer, Special Court (Offences in Banks) Sindh at Karachi in Case No. 56/2013 arising out of the FIR No.36/2013 registered at PS FIA CBC, Karachi, for the offence under sections 409, 420, 468, 471, 477-A/34/109 PPC, whereby the appellants were convicted u/s. 420 PPC and sentenced them to suffer R.I. for six (6) years and fine of Rs.26 lacs and in default thereof, to further suffer S.I. for one (1) year. The appellants were also convicted for an offence u/s.468 PPC and sentenced them to suffer R.I. for six (6) years and fine of Rs.50,000/- and in default thereof, to further suffer S.I. for six (6) months more. They were also convicted u/s. 471 PPC and sentenced them to suffer R.I. for six (6) years and fine of Rs.50,000/- and in default thereof, to further suffer S.I. for six (6) months. The learned trial Court further ordered that all the sentences shall run concurrently. However, the benefit of section 382-B, Cr.P.C. was also extended to both the accused/appellants.

2. Brief facts of the case are that a joint complaint was registered at FIA CBC Karachi by Khursheed Ahmed S/o Abdul Ghafoor, Branch Manager and S. Ali Haider Naqvi S/o S.M. Baqar Naqvi,

Manager Operation HBL Shahrah-e-Pakistan Branch, F.B. Area Karachi stating therein that accused Syed Junaid Ali Shah in active connivance of his other accomplices obtained the credential/secret information and full particulars of A/c No.22877100245003 of HBL, WAPDA Town Branch Gujranwala titled Imran Afzal Khokhar. Thereafter, he arranged fake cheque book requisition slip on which he made forged signature of Imran Afzal Khokhar and with active connivance of accused Sajid Ali, a banker holding duties of clearing, collection of bills posting and cheque deposit and posting of cheque book requisition at HBL, WAPDA Town Branch Gujranwala processed the same for issuance of a fresh cheque book. Later on, with the connivance of his another accomplice Ghulam Ghous also a banker holding duties of cheque book to the account holder. Accused Syed Junaid Ali Shah received the cheque book request process, HBL WAPDA Town Branch Gujranwala whose duty was to deliver the cheque book to the account holder. Accused Syed Junaid Ali Shah received the cheque book by forging the signature of the actual account holder on the cheque book receipt register. After receiving the million fresh cheque book accused Syed Junaid Ali Shah got transferred an amount of Rs.2.600 million through cheque Nos.3844706 dated 26.07.2012 & 3844713 dated 27.07.2012 amounting of Rs.1.300 million each, bearing forged signature of account holder to the account of his accomplice accused Syed Nizam Mohiuddin Rafai at HB, Shahrah-e-Pakistan, FB Area Branch, Karachi from where the amount was withdrawn, hence accused Syed Junaid Ali Shah, Syed Nizam Mohiuddin Rafai, Sajid Ali & Mian Ghulam Ghous of HBL, WAPDA Town Gujranwala Branch with active connivance and abetment with each other have committed the offence.

3. After completing all formalities, the charge was framed against the accused on 23.11.2015 to which they pleaded not guilty and claimed trial vide their plea from Ex.3/A to Ex.3/D. In order to established the charge against the accused the prosecution examined PW-1 Syed Ali Haider at Ex.4, who produced his complaint at Ex.4/A, seizure memo of documents at Ex.4/B, AOF, coupled with cheques from Ex.4/B-1 to Ex.4/B-8, AOF of Imran Afzal Khokhar at Ex.4/C-1, SS Card, statement of account etc. from Ex.4/C-2 to Ex.4/C-6,

seizure memo of CCTV footage as well as its USB at Ex.4/D, 19 photographs of CCTV footage from Ex.4/D-1 to Ex.4/D-19, USB as article P/1. PW-2 Muhammad Mehdi at Ex.6. PW-3 Syed Najamul Hassan Gillani at Ex.8. PW-4 Adeel Hassan Zaidi at Ex.9. PW-5 Taquiuddin Nomani at Ex.11. PW-6 Muhammad Maroof at Ex.13, who produced seizure memo of documents at Ex.13/A, four paid up cheques from Ex.13/A-1 to Ex.13/A-4. PW-7 Abdul Rehman at Ex.14, who produced handwriting expert report at Ex.14/A. PW-8 Syed Faisal Ali at Ex.15, who produced a copy of the FIR at Ex.15/A. PW-9 Abdul Rehman at Ex.16. The prosecution has given up PWs Khursheed Ahmed and PW Hamid Aijaz vide their statements at Ex.5 & Ex.10. Thereafter, the prosecution closed its evidence side vide statement Ex.18. Statements of the accused persons were recorded U/s 342(1) Cr.P.C. wherein they denied the allegation leveled against them and claimed to be innocent. However, the appellants/accused persons neither examined themselves on oath in disproof of the charge nor led any evidence in their defence. The learned trial Court, after hearing the parties and on the assessment of the evidence, convicted and sentenced the appellants as stated above vide judgment dated 16.02.2019, which is impugned before this Court by way of filing the instant Criminal Appeals.

4. Mr. Amir Mansoob Qureshi, learned counsel for the appellant Syed Junaid Ali Shah, in CrI.Appeal No.123/2019 mainly contended that the impugned judgment is against the law and facts of the case; that the appellant is innocent and has falsely been implicated in this case; that PW-1 has not identified the person as the same person who posed himself to be Afzal Khokhar; that on same set of evidence the learned trial Court has **“acquitted”** the appellant in Case No.26/2012 ***(the State vs. Syed Junaid Ali Shah and others)*** arising from FIR No.17/2012 FIA CBC Karachi punishable under Section 419, 420, 468, 471,477-A/109 PPC and convicted the appellant in the present case; that the appellant/accused has not committed any fraud and cheating in this case but the role assigned against the appellant/accused is only that he has himself posed to be Afzal Khokhar otherwise he has no concern with the commission of offence; that at the time of incident the appellant was out of country ; that the conclusion arrived by the learned trial Court is erroneous

and not tenable under the law. He lastly contended that the prosecution has miserably failed to prove its case against appellant Syed Junaid Ali Shah and thus, according to him, under the above-mentioned facts and circumstances, the appellant is entitled to his acquittal. In support of his contentions, he has relied upon the cases (1) *Qasim Ali Malik vs. The State and 2 others* (2012 PCr.LJ 124), (2) *Malik Muhammad Iqbal vs. The State* (1987 PCr.LJ 247), (3) *Asfandyar and another vs. Kamran and another* (2016 SCMR 2084), (4) *Mst. Saadat Sultan and others vs. Muhammad Zahur Khan and others* (2006 SCMR 193), (5) *Subedar Fazal Hussain vs. Qazi Muhammad Bashir and 12 others* (1982 SC AJ&K 89) and (6) *Hamid Qayyum and 2 others vs. Muhammad Azeem through Legal Heirs and another* (1995 PLD Supreme Court 381).

5. Mr. Muhammad Jamil, learned counsel for the appellant Syed Nizam Mohiuddin Rafai, in Crl.Appeal No.116/2019 has supported the arguments advanced by the learned counsel for the appellant in Crl.Appeal No.123/2019 and further contended that appellant Syed Nizam Mohiuddin Rafai is innocent and has falsely been implicated in this case; that the witnesses have not deposed against the appellant and the learned trial Court has only considered the aspect of the alleged prosecution case; that the appellant is not a dangerous, desperate and hardened criminal as well as he is not a previous convicted; that the appellant is facing the agony of the trial for the last six years and he was only bread earner of his family now his family is facing hardship. He lastly prayed for acquittal of the appellant and further submitted that if the acquittal is not possible then sentence may kindly be reduced into the period already undergone. In support of his contentions, he has relied upon the cases (1) *Kaleemullah alias Bhola vs. The State and others* (2017 PCr.LJ 586), (2) *Muhammad Akram vs. The State* (2009 SCMR 230), (3) *Basharat Ali vs. Muhammad Safdar and another* (2017 SCMR 1601), (4) *Nadeem Ramzan vs. The State* (2018 SCMR 149), (5) *Shah Bali and another vs. The State* (2016 PCr.LJ 549), (6) *An unreported judgment passed by Hon'ble Supreme Court of Pakistan in Criminal Miscellaneous Application No.200 of 2019 in Criminal Appeal No.238-L of 2013 regarding False Statement*, (7) *Mst. Marvi Bhatti vs. The State* (2018 MLD 1329), (8) *Ali Anwar and 2 others Vs. The State* (1988

PCr.LJ 2017), (9) Prof. Dr. Muhammad Sarwar Chaudhry and another vs. The State and 2 others (2001 YLR 2478) and (10) Muhammad Shah vs. The State (2010 SCMR 1009).

6. Conversely, learned Asst. Attorney General for Pakistan appearing for the State while supporting the impugned judgment contended that the prosecution has established its case against both the appellants from oral as well as documentary evidence, but he has not controverted the above position, that on the same set of evidence Syed Junaid Ali Shah has been acquitted in case No.26 of 2012 by the learned trial Court by relying upon the plea of alibi. On our query, he has admitted that the judgment dated 06.03.2018 passed by learned Judge, Special Court (Offences in Banks) Sindh at Karachi in Case No.26/2012 has not been impugned before this Court.

7. We have heard the learned counsel for the parties and have minutely perused the material available on record with their able assistance. On careful perusal of material brought on record, it is appropriate that we will take up first the case of appellant Junaid Ali Shah, as he has taken plea of alibi that from June 2008 up to October 2012, he remained out of country, he has taken such plea in FIR No.17/2012 at Police Station FIA CBC, Karachi under sections 419, 420, 460, 471, 477-A/109 PPC in Case No.26/2012 **(the State vs. Syed Junaid Ali Shah and others)**. The learned trial Court while acquitting accused Syed Junaid Ali Shah from the above case has made the following observations:

***“The accused denied the commission of the offence in their statements under Section 342(1) Cr.P.C. Accused Syed Junaid Ali Shah claimed that he remained out of the country from June 2008 up to October 2012. On his such plea, travel history was called from FIA Immigration IBMS JIAP Karachi. The report confirmed the stance of the accused Syed Junaid Ali Shah that he departed from the country in June 2008 and returned in October 2012.”***

Learned trial Court further observed that:

***“However present incident took place on 14.3.2012 when accused Junaid Shah was abroad. No direct or indirect evidence has been brought on record to connect present both the accused with the commission of the alleged offence”.***

8. On such plea, by extending the benefit of the doubt, the appellant was acquitted from the charge by learned trial Court, but in the present case while convicting the appellant learned trial Court has observed in the judgment as under:

***“On the plea of accused Syed Junaid Ali Shah that he was abroad on relevant date. He argued that travel history called by this Court cannot be fully relied. The FIA itself is not confident about the genuineness of travel of passenger as it is mentioned on the document of travel history that these are not meant for Court’s proceedings.”***

9. In this case, the allegation against the appellant Syed Junaid Ali was that on 26.07.2012 and 27.07.2012 he along with co-accused Syed Nizam Mohiuddin Rafai deposited two cheques amounting of Rs.13 lacs in the bank and appellant Syed Junaid Ali Shah posed himself as Afzal Khokhar. It appears from the record that the appellant was acquitted by the learned trial Court by relying upon his travel history, which was earlier produced by the FIA authorities before the trial Court whereby the appellant acquitted on the ground that from June 2008 up to October 2012 the appellant was out of country and the present incident had occurred from 26.07.2012 to 27.07.2012. Furthermore, the learned trial Court while convicting the appellant Syed Junaid Ali Shah has made the observation that FIA itself is not confident the genuineness of travel of the passenger, the data showing travel of passenger is always being provided by the passenger and fed by FIA staff, thus human error cannot be ruled out. The above observations made by trial Court having no force, as the procedure provided at all airports that if, any person traveled abroad on presentation of his/her passport before FIA officials, they will made entry in the data/computer and in the last they affixed stamp on the passport “**Exit**” along with date, and on his arrival the FIA made entry in the data/computer and affixed stamp of “**Arrival**”. On the basis of the travel history of the appellant, the same was provided by FIA to the learned trial Court, the plea taken by the appellant that he was out of the country on given dates, was confirmed by the FIA authorities that on given dates he/appellant was out of the country. The learned trial Court was not sure that at the time of committing the offence, appellant was in Pakistan or out of the country. Furthermore, PW-1 in his examination-in-chief

deposed that **“Accused Syed Junaid Ali Shah probably is the same person who posed himself to be Afzal Khokhar and the accused Syed Nizam Mohiuddin Rafai is not known to him.”** In view of the above, the complainant was not sure whether the person present in CCTV camera was Syed Junaid Ali Shah or not and on mere suspicious, no one can be convicted and for conviction, strong corroboration and material evidence are required by the Court(s) to convict the person/accused.

10. It is a well-settled proposition of law that the prosecution is bound to prove its case beyond any shadow of a doubt. If any reasonable doubt arises in the prosecution case, the benefit of the same must be extended to the accused not as grace or concession, but a matter of right. Likewise, it is also the well-embedded principle of criminal justice that there is no need of so many doubts in the prosecution, rather any reasonable doubt arising out of the prosecution evidence pricking the judicious mind is sufficient for the acquittal of the accused. In this respect, reliance is placed upon the case of ***Mohammad Mansha v. The State (2018 SCMR 772)*** the Hon’ble Supreme Court of Pakistan has held as under:

***“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v, The State 2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749).”***

11. For the upshot reasons as discussed hereinabove, the convictions and sentences awarded to appellant Syed Junaid Ali Shah in Criminal Appeal No.123/2019 by the learned trial Court vide impugned judgment dated 16.02.2019 are set aside. Accordingly, Criminal Appeal No.123/2019 is allowed. Appellant Syed Junaid Ali Shah is acquitted from the charge leveled against him in this case by extending the benefit of the doubt. The appellant is in jail, he is

directed to be released forthwith, if not required in any other custody case.

12. Reverting to the case of appellant Syed Nizam Mohiuddin Rafai, prosecution examined (PW-1) Syed Ali Haider, who in his evidence deposed that after some days of opening of his account the appellant visited his branch along with one Afzal Khokhar and deposited cheque in the sum of Rs.13 lacs which was credited in the account of Nizam Mohiuddin Rafai (appellant) and following day Afzal Khokhar deposited another cheque of Rs.13 lacs which was also credited in the account of Nizam Mohiuddin Rafai (appellant). After deposit of cheque of Rs.13 lacs on both the consecutive dates, same were immediately withdrawn by the customer Nizam Mohiuddin Rafai (appellant) on the very same day of their credit. The prosecution in order to support the contention of the PW-1 examined (PW-2) Muhammad Mehdi has deposed that in the month of February 2012 he was posted as Customer Service Officer in HBL Shahrah-e-Pakistan Branch and he has opened a subject account in the name of Syed Nizam Mohiuddin Rafai. (PW-3) Syed Najamul Hassan also deposed in his evidence on 26.07.2012 a cheque was received by him in the sum of Rs.13 lacs for credit in the account of Syed Nizam Mohiuddin Rafai, who was maintaining an account in his Branch. On very next day i.e. on 27.07.2012, another cheque of Rs.13 lacs was also presented which was verified by the Cashier and was sent to Hamid Aijaz for its cancellation and after cancellation, they sent it to him for supervision. All the antecedents of the said cheques were found perfect and it was encashed. Both the cheques were produced as Ex.4-B/7 & Ex.4-B/8. All the PWs in their evidence deposed that appellant Syed Nizam Mohiuddin Rafai is the same person, who has deposited the two cheques of Rs.13 lacs on given dates and the same were immediately withdrawn by the Nizam Mohiuddin (Appellant). The evidence of all prosecution witnesses is sufficient to connect the appellant with the commission of an offence that he is a real culprit, who had committed fraud and cheating with the bank.

13. As regards, the contention of learned counsel for appellant Syed Nizam Mohiuddin Rafai that he is not dangerous, desperate and hardened criminal as well as he is not a previous convicted,



therefore, the sentence awarded to him may be reduced into the period already undergone, is concerned, it is a matter of record that the appellant is in jail for a period of more than three (3) years, five (5) months and fourteen (14) days including remissions and the family of appellant, per learned counsel, is passing a miserable life due to his confinement in jail. Needless to say that normally, it is very difficult for a family to survive without the support of earning member of the family. The position, being so, would be nothing, but causing misery to the family of the person/appellant on account of his act. The peculiar facts and circumstances, so pleaded by the counsel for the appellant, has gone unchallenged by the prosecution, which may well be taken into consideration for departing from the normal practice. Further, as per the jail roll dated 12.03.2019, the conduct of the appellant during confinement is "satisfactory". He is the first offender and has no previous criminal history in his credit. Besides, the appellant claims himself to be the only male member of his family and he has also served three (3) years, five (5) months and fourteen (14) days in the imprisonments including remissions, therefore, while taking lenient view and following the principle laid down by the *Hon'ble Apex Court* in a case of **Niazuddin v. The State (2007 SCMR 206)** the Hon'ble Supreme Court of Pakistan was pleased to reduce the sentence from the imprisonment of ten years to six years. In another case of **Gul Naseeb v. The State (2008 SCMR 670)** the Hon'ble Supreme Court of Pakistan has also reduced the sentence from imprisonment for life to ten years. In such circumstances, in our view, the appellant had suffered adequate punishment and the ends of justice have been satisfied. It is appropriate that the appellant may be given an opportunity to improve himself as a law-abiding citizen.

14. Keeping in view the above facts and circumstances of the case, we are of the considered view that the prosecution has discharged its burden of proving the guilt of the appellant beyond a shadow of reasonable doubt, thus, the instant appeal is dismissed on merits. However, in view of the discussion made hereinabove on the plea of reduction of sentence, we find it a fit case for departure from the normal practice of determining the quantum of sentence. The jail roll dated 12.03.2019 reflects that the appellant has served the sentence

for three (3) years, five (5) months and fourteen (14) days including remissions.

15. Considering the above facts and circumstances, in view of the above, it would serve both the purposes of deterrence and reformation, if the sentences awarded to the appellant are modified and reduced. Accordingly, the sentences awarded to the appellant Syed Nizam Mohiuddin Rafai in Case No.56/2013 arising out of FIR No.36/2013 are reduced from (6) years to (3) years on each count and in case of non-payment of fine, the appellant shall further suffer S.I. from one (1) year to four (4) months and fourteen (14) days on each count. All the sentences on each count shall run concurrently.

16. With the above modifications, the instant Criminal Appeal No.116 of 2019 stands dismissed being devoid of merits.

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