

IN THE HIGH COURT OF SINDH, KARACHI

Before:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Zulfiqar Ali Sangi

Criminal Accountability Appeal No. 03 of 2018

Appellant : Syed Salahuddin S/o Nizamuddin Shah,
Through Mr. Nisar Ahmed Tarar, Advocate

Respondent : The State
Through M/s. Khalid Mehmood Awan and
R.D Kalhoro, Special Prosecutors NAB.

Date of Hearing : 06-11-2019 and 18-11-2019

Date of Judgment : 13-12-2019

J U D G M E N T

ZULFIQAR ALI SANGI---J., Appellant filed instant Criminal Accountability Appeal on being aggrieved and dissatisfied with the judgment dated 14.02.2018 passed by learned Judge, Accountability Court-III, Sindh Karachi in Reference No.05/2015; whereby the appellant was convicted under section 10 of the National Accountability Ordinance, 1999 r/w Sr. No.5 of the schedule of the offences appended with the Ordinance and sentenced him to suffer R.I. for fourteen (14) years and to pay fine of Rs.78,400,000.00/- (78.4 million). The appellant shall forthwith cease to hold public office, if any, held by him and he stands disqualified for a period of ten (10) years to be reckoned from the date of elected, chosen, appointed or nominated as a member or representative of any public body or any statutory or local authority or in service of Pakistan or of any province so also he shall not be allowed to apply for or be granted or allowed any financial facilities in the form of any loan or advances from any bank or Financial Institution in the public sector, for a period of ten (10) years from

the date of conviction. However, the benefit of section 382(B) Cr.P.C. was extended to the appellant.

2. Briefly facts as narrated in the Reference are that a complaint regarding misappropriation of Rs.78.4 million was received by NAB against accused Syed Salahuddin, Ex-Operation Manager/Joint Custodian, National Bank of Pakistan, Shaheed-e-Millat Road Branch, Karachi; thereafter an inquiry was authorized which was subsequently converted into investigation vide authorization letter No.242068/1/FCIW/CO-B/T-2/NAB Karachi/2015/K-448 dated 26.01.2015 by the Director General NAB Karachi. It was found that an IBR (Internal Bank Reconciliation Report) entry reflected an outstanding amount of Rs.78.4 million rupees in the said NBP branch, and on further scrutiny of branch record, it revealed that accused Syed Salahuddin had made fake inter branch entry and its trail was originated in May, 2013 and on 02.05.2013 an entry was generated in Prize Bond Register showing purchase of Prize Bonds with denomination of Rs.25000/- each amounting to Rs.98.400 million rupees and was shown in cash payment book. It is also alleged by the prosecution that on 06.05.2013 accused originated NBP General Entry of Rs.78.4 million against NBP Main Branch Karachi but such shipment of Prize Bonds was never made to NBP Operational Manager/Joint Custodian and same amount was misappropriated. On 06.05.2013 accused showed a fake posted cheque bearing an amount of Rs.78.4 million to Tariq Saleem Khan Head Cashier and said to him that a party had arrived to purchase Prize Bonds of Rs.25,000/- denomination and said Tariq Saleem Khan without verifying the cheque gave 3136 Prize Bonds of Rs.25,000/- denomination each and in order to conceal the outstanding amount reflected in IBR report accused repeatedly

made fake entries in breakup amount which shows his consistency in commission of crime. It is further stated that accused has admitted his guilt before the inquiry committee of NBP and NAB authorities and gave his confession in writing duly signed by him and in order to adjust the outstanding amount he has given the cheque of Rs.10 million dated 9.9.2014 from his own credit vouchers prepared for NBP main branch singly signed by him. That original TVRs were missing and duplicate vouchers with his signature were prepared long after the commission of the crime and there are no counter signatures by other bank officials which also substantiate that accused has committed this crime solely. It is further alleged that in order to conceal the outstanding amount in IBR list the accused repeatedly reversed entries which shows his consistency in commission of a crime as per following details:-

- i. NBP General entry of Rs.78,401,250/- was reversed and re-originated in split amounts of Rs.39,880,990/- and Rs.38,520,260/- on 21-10-2013 through sub-assignment account 3919-5 to camouflage it from detection.
- ii. Both entries were again reversed on 18-02-2014 through TDR GL Head and re-originated again by consolidated amount of Rs.78,401,250/- by crediting it to TDR GL Head on 21-02-2014..
- iii. Fresh NBP General entry of Rs.33,584,250/- and Rs.51,287,180/- (Total Rs.84,871,430/-) was originated and were credited to Sub/Assignment A/c No.3919-5 on 02-06-2014.
- iv. An outstanding NBP General entry of Rs. 78,401,250/- originated on 21-02-2014 was debited again instead of reversal through account No.3919-5 on 02-06-2014. Now

both outstanding entries of Rs.78,401,250/- each (One originated on 21-02-2014 and second on 02-06-2014) were reversed on 03-06-2014 through Sub-Assignment account 3919-5 having a credit balance of Rs.84,871,430/-.

- v. Another NBP General entry of Rs.69,500,380/- was originated on 10-06-2014 through assignment A/c No. 3906-0. Given account 3906-0 was further credited by Rs.6,470,180/- and by Rs.8,900,870/- on 11-06-2014 through NBP General Account.
- vi. NBP General entry of Rs.51,287,180/- and Rs.33,584,250/- originated on 02-06-2014 were reversed on 11-06-2014 through Assignment Account 3906-0.
- vii. Another NBP general entry of Rs.54,068,093/- was originated on 13-06-2014 consisting of assignment account proceeds inclusive of fake Rs.8,900,870/- credited to assignment A/c 3906-0 which was further reconciled on 14-06-2014 by reversing NBP General entry of Rs.8,900,870/- originated on 11-06-2014.
- viii. The reversal of the entry of Rs.54,068,093/- unearthed the following fake outstanding entries
 - Rs. 69,500,380/- dated 10-06-2014.
 - Rs. 54,068,093/- dated 13-06-2014 (inclusive of fake entry of rupees Rs. 8,900,870/-).

Total amount outstanding Rs. 78,401,250/-

Thus, accused had acted illegally and caused loss to the Government Exchequer, therefore the reference was filed against him for corruption and corrupt practices.

3. After compliance of provision of Section 265-C Cr.P.C, charge of corruption and corrupt practices as defined under Section 9(a) (iii) of N.A. Ordinance 1999 punishable under Section 10 of the Ordinance was framed on 20.04.2015 against accused Syed Salahuddin at Exh.02, to which he pleaded not guilty and claimed trial.

4. In order to prove its cases, prosecution examined as many as 09 witnesses who exhibited various documents in support of the prosecution case where after the prosecution closed its side. The appellant/accused recorded his statement under Section 342 Cr.P.C. Thereafter the trial Court, after hearing the parties and on assessment of the evidence, convicted and sentenced the appellant through the impugned judgment dated 14.02.2018, against which the appellant has filed instant appeal.

5. Learned counsel for the appellant contended that appellant is innocent; that appellant has committed no offence; that all the prosecution witnesses have given contradictory evidence on each and every point; that the trial court mainly relied upon the confessional statement of the appellant which he retracted by filling the affidavit before the trial court at initial stage of the trial; that confession was not before any Magistrate and extra judicial confession which later on retracted has no value in the eyes of law; that no case of similar nature was filed or pending against the appellant; that no loss occurred to the Bank; that prosecution exhibited about 64 documents in the evidence but only two documents were put to appellant during his statement under section 342 Cr.P.C and trial court convicted while relying on the same documents which is against the law; that it is duty of the prosecution to prove the case beyond shadow of doubt but in the

present case prosecution failed to proved its case against appellant beyond shadow of reasonable doubt; lastly the counsel for appellant contended that by extending the benefit of doubt appellant may be acquitted while relying on the reported cases PLD 1967 Kar 800, PLD 1980 Lah 40, 1984 P. Cr. L. J 2511, PLD 1960 WP (lah) 24, NLR 1989 UC 751, NLR 1994 Criminal 502, 1982 P. Cr. L. J 658, (A&JK), PLD 2019 SC 64 (88), PLD 2002 Lah 95 and 23 and PLJ 2001 Cr. C (Kar) 975.

6. Learned prosecutors NAB on the other hand contended that prosecution has proved its case against appellant beyond any reasonable doubt; that all the witnessed deposed against appellant and they furnished oral as well as documentary evidence against the appellant; that no major contradiction has been pointed out by learned counsel for appellant which suggests that case is a false one; that no enmity or ill-will has been suggested against the prosecution witnesses during their cross examination; that the appellant also confessed his guilt and submitted hand written applications under which he submitted a cheque of Rs 10 million as advance/ partial payment against embezzled amount and two applications for time relaxation to not lodged FIR against him on account of his involvement in embezzlement; that in his confession he admitted that no one except him is involved in misappropriation of the amounts and that sufficient evidence is available on record to show that the prosecution has proved its case against the accused beyond reasonable doubt and as such his appeal be dismissed and his conviction and sentence maintained. In support of their contentions, they placed reliance on the cases of PLD 2000 SC 18, PLD 2010 SC 29 (AJK), 2019 SCMR 372, 2013 P. Cr. L. J 1089, 2019 P. Cr. L. J 1001 and 2015 P. Cr. L. J 697.

7. We have heard the learned counsel for the parties and have gone through the record with their able assistance and considered the relevant law.

8. On our reassessment of evidence we have found that prosecution has proved its case beyond reasonable doubt against the appellant by producing trustworthy and confidence inspiring evidence. Evidence of all the witnesses was reassessed by us and we have found that initially the departmental inquiry was conducted and a team was constituted who conducted the inquiry. During the said departmental inquiry the appellant confessed his guilt before the committee and submitted his written confession duly signed by other witnesses, he gave cheque for repayment of misappropriated amount for which he in his hand writing submitted applications wherein he requested for time for repayments but he failed to pay the amount back which led to the matter before referred to NAB for inquiry.

9. The prosecution examined witness namely Asghar Hameed who deposed that he appeared before the NAB investigation officer and produced the record/documents related to the departmental inquiry/investigation against the appellant, which beside other documents included debit and credit vouchers and other related entries in the record of the Bank related to the same scam. He also produced the confessional statement of appellant dated: 26-06-2014, Departmental inquiry/investigation report dated: 27-07-2014 submitted by the inquiry/investigation team to the Regional Head, National Bank of Pakistan, and original cheque No. 7722900/ of account No. 68270 dated: 09-09-2014 showing an amount of Rs. 10 million submitted by the appellant for his repayment of such

misappropriation. This witness also signed the confession as witness of the said confession of appellant.

10. Another important witness namely Habib-ur-Rehman was examined by the prosecution who deposed that in the month of May 2014 he had detected some un-authorized entries in the general account of NBP. He found entry dated: 21-02-2014 in the inter branch reconciliation and government account wing list-A of NBP showing that an amount of Rs. 78,401,250/= was debited in main branch Karachi. On such they started follow up of the said entry from appellant and during such follow up they came to know that there were certain un-authorized NBP general entries which were originated and again same were reversed for so many times having no base or proper document about such entries. He further deposed that in the month of May 2014, a memo was issued to the appellant for clarification by him with regard to such un-authorized entries and during the verification of the record it was found that the said entry dated: 21-02-2014 was originally generated from the main branch Karachi showing therein the debit of that amount, further it was detected that the tail of that particular entry was originated on 6th May, 2013 and the amount of that entry viz: Rs. 78,401,250/= was shown to had been credited into prize bond general ledger head. Such entry relating to the prize bond general ledger was also entered in the relevant prize bond register signed by the then chief cashier namely Tariq Saleem and the appellant as joint custodian. The said entry relating to NBP general account was subsequently reversed and re-originated in split and other consolidated amount by the then Ex-operation Manager and so also the appellant being joint custodian as all the relevant vouchers were also signed by the appellant. He deposed that after completing the inquiry he

submitted such report to Regional Head who on the report constituted inquiry team consisting of three officials. He further deposed that appellant confessed his guilt before the committee in writing and that he also signed as witness. The appellant handed over a cheque to him of Rs. 10 million of his official personal account and appellant also gave in writing that besides the cheque amounting to Rs. 10 million as issued by him. He was willing to adjust the remaining amount up to 25-09-3014. He further deposed that the appellant wrote him two separate letters making a request therein for time to adjust the remaining amount which he forwarded to Regional Head NBP Karachi and subsequently he was authorized by Regional Head to make complaint to NAB against the appellant which he did that the NAB conducted an inquiry and then investigation and after completing the investigation reference was filed. He exhibited several documents relating to the case and he also saw and confirmed several documents which PW-1 exhibited in his evidence.

11. In support of the evidence of PW-1 and 2 the prosecution examined PW-3 namely Masood Ahmed, PW-4 namely Hafeez Ahmed Shah, PW-5 namely Jameel Ahmed Malik, PW-6 namely Muhammad Ilyas Malik, PW-7 namely Muhammad Iqbal Ahmed, PW-8 namely Tarique Saleem, beside these witnesses an important witness was the investigation officer namely Kamran Ali Janwari who was also examined and fully supported the case of the prosecution. He confirmed that he collected the entire documents during the inquiry and investigation and recorded statements of the witnesses under section 161 Cr.P.C. All these witnesses supported the case of prosecution and they were cross examined at length but

we do not find any material contradiction which creates any dent in their evidence and which makes the prosecution case doubtful.

12. We have also examined the inquiry report exhibited by PW-1 in his evidence as Ex: 4/03 available at page 285 of the paper book carefully in which entire entries discussed and confessional statement of appellant was also discussed. An inquiry was conducted by three officials of the bank against them appellant has not suggested any enmity or ill-will. In the conclusion paragraph of the inquiry report it is mentioned that the fraud was committed by originating initial entry dated: 02-05-2013 of Rs. 98,400,000 by debiting National Prize Bond Head vouchers which were jointly signed by Mr. Tariq Saleem Ex-OG-II/ the then incharge cash and Syed Salahuddin OG-II/ Operation Manager/ Joint Custodian (Appellant). Since this entry included un-reconciled amount of Rs. 78,400,000/= as the same is still outstanding in NBP General Account and based on the confession by Syed Salahuddin submitted to Branch Manager on 26-06-2014 they (committee members) are of the opinion that the responsibility falls upon appellant and Tariq Saleem the then incharge cash. The Committee was also of the considered view that the matter falls under the purview of Fraud and Forgery. The committee also recommended a special audit and detailed investigation and on said recommendation matter was referred to NAB.

13. It is well settled principal of law that evidence of extra-judicial confession is a fragile piece of evidence and great care and caution has to be exercised in placing reliance on such a confession. Such confession is always looked at with doubt and suspicious due to the ease with which it may be concocted. Legal worth of the extra judicial confession was almost equal to naught, keeping in view the

nature, course of events, human behavior, conduct and probabilities in ordinary course. Extra-Judicial confession could be taken as corroborative of the charge if it, in the first instance, rang true and then found support from other evidence of unimpeachable character. If the other evidence lacked such attribution it had to be excluded from consideration. It has also been settled by the Apex Court that for awarding conviction on the basis of extra-judicial confession three fold proofs are required i.e. Firstly; it was in fact made; Secondly; that it was voluntarily made; and thirdly; it was true. A judicial or extra-judicial confession could be made sole basis for conviction of an accused, if the court was satisfied and had believed that it was true and voluntary and was not obtained by torture, coercion or inducement. Reliance is placed on PLD 2019 SC 64 and 2011 SCMR 1233.

14. In the case in hand the important and reliable evidence against the appellant is his own confession which is available in the paper book at page 283 exhibited by the PW-1 namely Asghar Hameed, We have gone through the contents of the confession of appellant in which he stated that vault shortage amount of Rs. 78,401,250/= was initially adjusted on 02-05-2013 jointly by the then Head cashier and appellant himself by debiting GL Prize bond Head. Prize bond Head was then credited on 06-05-2013 through NBP General Account. He reversed that entry on 21-10-2013 and again originated on 21-10-2013 through A/c 39195 and then again reversed that entry on 18-02-2014 through TDR and re-originated on 21-02-2014 through TDR without supporting papers. He further reversed that entry on 02-06-2014 and 03-06-2014 and again originated and adjusted relevant entries through A/c 3906-0 through unauthorized NBP General Account and all vouchers were

singly signed by him. He further confessed that he personally did such transactions and no one from branch was involved in the given transactions as the before Handing and Taking over charge of chief cashier (Mr. Tariq Saleem). He confessed that branch vault was short of Rs. 78,400,000.00. Being Joint Custodian, he admitted his responsibility and stated that he did that after watching the condition of the outgoing chief cashier Mr. Tariq Saleem who's wife was suffering from cancer and one of his daughter was disabled. Seeing his condition and consequences of the shortage of vault. He further mentioned in his confessional statement that he admitted that he is responsible for the vault shortage and unauthorized NBP general entries of Rs. 78,401,250/= and no one from NBP Shaheed-e- Millat Road Branch Karachi is involved in the scam. He further confessed that he will try to manage and adjust this amount within three months.

15. We also noticed that appellant retracted the same confession and denied his signature on it at the time of his statement under section 342 Cr.P.C by taking specific plea that he filed an affidavit before the Administrative Judge of the Accountability Court while in the custody in which appellant denied the confession. Admittedly he denied the signature on confessional statement when he was arrested by the NAB and he has not denied the same when inquiry report was submitted by the inquiry committee nor he denied the same prior to his arrest which in our view is after thought. Further supportive evidence to the said confessional statement is available in shape of cheque of Rs. 10 million issued by the appellant from his personal account and his two hand written applications for extension of time for payment, and the fact that two witnesses have also signed the said confessional statement who being witness of

the said confession was examined before the trial court who also supported the confession and the prosecution case by deposing that appellant confessed his guilt in their presence and signed the same. We have also examined the evidence in respect of confession and found admission on behalf of appellant in shape of suggestion made to PW-1 Asghar Hameed who in reply of suggestion made by counsel stated that **“It is incorrect to say that the confessional statement of Salahuddin was already signed by manager of the bank as well as by the accused Salahuddin when I was called for, by the manager in his office to witness that document viz; confessional statement”**.

16. His confession is fully corroborated by the evidence of PW-1 and 2 whose evidence is already discussed above. His confession is also corroborated by documentary evidence produced by the witnesses. In our view his confession has been made voluntarily and has not been obtained by torture, coercion or inducement as at the time of confession matter was not in the hands of NAB nor any FIR was registered against the appellant nor he was in custody and he was not suspended from his service at that time. His confession is also true and is corroborated by the fact that he voluntarily issued cheque of Rs.10 million of his personal account and agreed to pay the balance back by installments once his criminality came to light.

17. We have examined the impugned judgment of the trial court where each and every point raised on behalf of appellant was discussed by the trial court in depth and fully answered and, therefore, we do not find it appropriate to reproduce here the same which is based on well reasoned, elaborate findings and passed in accordance with law.

18. We note that the financial loss to society from white-collar crimes (like present crime) is probably greater than the financial loss from burglaries, robberies and larcenies committed by the persons of the lower socio-economic class. It is high time to deter those from committing acts of corruption and to save the economic structure of our country which is already facing a serious financial situation.

19. Thus based on the discussion made hereinabove we are of the considered view that the prosecution has proved its case beyond a reasonable doubt against the appellant by producing reliable, trustworthy and confidence inspiring oral evidence as well as documentary evidence in support of the same coupled with the confessional statement of the appellant and cheque issued by appellant for Rs. 10 millions out of his personal account in lieu of payment of said scam. In these circumstances we are of the view that a deterrent sentence is the appropriate one. We therefore uphold all the sentences, fines and penalties for each offence in the judgment whilst dismissing the appeal.

JUDGE

JUDGE