

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No. 833 of 2019

Before:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio

Appellant: Muhammad Younis Dawood through
Mr. Arif Ali Pirzada, advocate.

Respondent: The State through Mr. Irshad Ahmed,
Deputy Attorney General.

Complainant: Jehanzeb Rauf through Mr. Kashif,
advocate.

Date of hearing: 04.03.2022

Date of announcement: 14.03.2022

JUDGMENT

KHADIM HUSSAIN TUNIO, J- The appellant Muhammad Younis Dawood son of Dawood, through instant appeal, has called in question the judgment dated 23.11.2019 (*impugned judgment*), passed by the learned Judge Special Court (Offences in Banks) Sindh at Karachi in Case No. 37/2014 (*Re-The State v. Muhammad Younis Dawood*) emanating from FIR No. 27 of 2014, registered at Police Station FIA CBC, Karachi registered under sections 409, 420, 468, 471, and 477-A PPC. Through the impugned judgment, appellant was convicted u/s 420 PPC and sentenced to suffer rigorous imprisonment for six years with a fine of Rs.13,364,000/-, in case of default whereof to suffer further imprisonment for one year. He was further convicted u/s 468 PPC and sentenced to suffer rigorous imprisonment for five years with a fine of Rs.50,000/-, in default thereof, he was to suffer further imprisonment of six months more. He was also convicted u/s 471 PPC and sentenced to suffer rigorous imprisonment for three years with a fine of Rs.50,000/-, in default whereof to suffer further

imprisonment for six months. All the sentences were ordered to run concurrently and benefit of S. 382(b) Cr.P.C was also extended to the appellant.

2. Facts, in brief, of the prosecution case are that the Manager of M/s Philip Morris Ltd Jehanzeb Rauf posted a written complaint to the Director FIA while alleging therein that during the scheduled review of the bank accounts maintained by Philip Morris Ltd. (*formerly known as "Lakson Tobacco"*) at Faysal Bank Jodia Bazaar and HBL West Wharf Road for the Workers Profit Participation Fund (WPPF), it was revealed that the present appellant who worked within the pay-roll department had issued pay orders in his own name and had also withdrawn cash through bearer cheques on which he forged signatures of the company's signatories as well. To cover up his tracks, he then forged a bank statement of Faysal Bank which was then verified to be fake from the statements issued by Faysal Bank and HBL Bank. Through this scheme, the appellant caused a total loss of Rs.7,090,000/- for which FIR was lodged.

3. After conclusion of investigation, a challan was submitted before the trial Court. After providing necessary documents, a formal charge was framed against the accused to which he pleaded not guilty and claimed to be tried. At the trial, prosecution examined fifteen witnesses namely PW-1 **Syed Waqar Ali**, PW-2 **Jehanzeb Rauf**, PW-3 **Hassan Sajjad**, PW-4 **Muhammad Riaz Mushtaq**, PW-5 **Babar Ali**, PW-6 **Asif**, PW-7 **Munaf Hussain**, PW-8 **Hameeduddin Shaikh**, PW-9 **Faisal Javed**, PW-10 **Ali Mehdi**, PW-11 **Kamran Kenny Christy**, PW-12 **Abdul Hameed**, PW-13 **Nafees Ahmed**, PW-14 **Bilal Ahmed** and PW-15 **Niaz Akbar**. All of the witnesses produced various documents and other items which were duly exhibited. Thereafter prosecution side

was closed. Statement of accused was recorded under S. 342, Cr.P.C, where he denied the prosecution case in *toto* and pleaded his false implication in simpliciter. However, he neither examined himself on oath nor examined anyone else in his defence to disprove the charge.

4. After hearing learned counsel for the respective parties, learned trial Court convicted and sentenced the appellant through impugned judgment as stated supra.

5. Learned counsel for the appellant has contended that no internal inquiry was conducted before the registration of FIR; that there is no eye-witness of the incident who saw the appellant commit the alleged offence; that both the banks, HBL and Faysal, have not sustained any loss by the alleged fraud by the appellant; that none of the employees from the bank have been involved as witnesses to the incident; that none of the witnesses have deposed that the cheques bore forged signatures; that appellant was not even issued a show cause notice to explain himself; that the prosecution witnesses involved him in this false case; that the appellant is innocent and has no concern with the embezzling of any funds from the accounts, as such he prays that the impugned judgment be set aside and the appellant may be acquitted of the charge. In support of his contentions, learned counsel has placed his reliance on the case law reported as *Bashir Ahmed Patwari v. The State* (1998 PCrLJ 347) and *Ms. Safeeda Bilques v. The State* (2010 PCrLJ 1112).

6. Conversely, learned Deputy Attorney General has fully supported the impugned judgment and in particular has contended that prosecution has examined many witnesses who have all supported the prosecution case; that no suggestion has been put forth to the witnesses by the appellant regarding his false

involvement; that no enmity or ill-will has been proved by the appellant with the prosecution witnesses. In support of his contentions, he has cited the case law reported as *Ghazanfar Ali alias PAPPU and another v. The State (2012 SCMR 215)*. Learned counsel for the complainant adopted the arguments put forth by the learned DAG for the State while further contending that the appellant was the sole beneficiary of the embezzled amount and had received the same in accounts maintained by him.

7. We have heard the learned counsel for the appellant, learned Deputy Attorney General and have perused the record available before us with their assistance.

8. Perusal of record shows that a complaint was received by the FIA from the manager of M/s Phillip Morris Ltd regarding embezzled funds from their company's accounts maintained at HBL West Wharf and Faysal Bank Jodia Bazar and after a bank statement was received, it was discovered that the appellant had made several fake pay slips in his name to withdraw a huge sum of money and had also managed signatures on bearer cheques to withdraw cash and then ultimately transfer the same to his account at MCB Sidco. The appellant had misappropriated a total amount Rs. 7.09 million. The matter was investigated by the FIA and it was found that the appellant had firstly deposited three pay orders (*Ex. 12-B/5, Ex. 12-B/9 and Ex. 12-B/10*) of Rs. 1.9 million, 1.7 million and 1.1 million from the HBL West Wharf (WPPF) which he then withdrew through his NIB bank personal account. The appellant also withdrew Rs. 6.3 million from the same account. A total of Rs. 4,950,000/- were transferred to the appellant's MCB Sidco account from the HBL West Wharf account maintained by M/s Phillip Morris Ltd. The appellant also withdrew an amount of Rs. 3.3 million through 8 cheques with forged signatures and out of the

said 3.3 million, Rs. 2.5 million were transferred to the company's West Wharf HBL account while the remaining amount was withdrawn through cash. PW-2 Jehanzeb Rauf not only produced the initial complaint, but also squarely blamed the appellant as the culprit of the crime while deposing that the appellant, through three pay orders and two bearer cheques having forged signatures, had withdrawn various amounts from the accounts maintained by the M/s Phillip Morris Ltd. He maintained his stance regarding the guilt of the appellant even after being cross-examined and despite being given the chance, the appellant did not dispute the depositions of the prosecution witness regarding the alleged fraud committed. PW-4 Muhammad Riaz, who was serving with the Bawa Securities Ltd also implicated the present appellant by stating that the appellant had purchased shares from him through six cheques pertaining to the appellant's account. PW-6 Asif deposed that he had sold a flat to the appellant in February 2008 in the sum of Rs. 2.825 million for which the appellant had prepared cheques in the name of PW-7 Munaf Hussain and had also given him a payorder. These cheques and the pay order were presented by PW-7. PW-10 Ali Mehdi who was the branch manager of Faysal Bank deposed that the authorized signatories of Phillip Morris Pakistan Ltd were known to be Syed Waqar and David Lawrie, however he deposed that the cheques he produced were encashed by the appellant Muhammad Younus as per bank record which was seized by the investigating officer. PW-12 Abdul Hameed who was the remittance incharge at HBL West Wharf branch deposed that the pay orders he produced from Ex. 19-A/12 to 19-A/15 were prepared from the Lakson Tobacco Company (*M/s Phillip Morris Ltd*) in the favour of the appellant. The cheques were sent to the hand-writing expert by the investigating officer with specimen signatures of the authorised signatories and per the report of the

hand-writing expert, the same did not match. The appellant has also not denied that he was posted in the pay-roll department wherein it was his responsibility to maintain the books of the company diligently, and not instead embezzle millions on millions. The appellant has also failed to controvert the overwhelming prosecution evidence showing that he was, in fact, the beneficiary of all the fraud committed by him in the wake of the pay orders, cheques and account statements pertaining to his accounts. The prosecution witnesses were never cross-examined on material aspects of the case by the appellant nor his counsel at trial. It is a settled principle of law that a material point of statement of a witness which is not cross-examined is deemed to have been admitted by the other side. In this respect, reliance is placed on the case of *Muhammad Rafiq and another v. Abdul Aziz* (2021 SCMR 1805) and *Hafiz Tassaduq Hussain v. Lal Khatoon and others* (PLD 2011 SC 296).

9. Oral as well as eye-witness account furnished not only found support by various documents produced by the prosecution *i.e.* the deposit slips and account statements, but also by the handwriting expert's report which is also positive to the extent that the signatures on the cheques presented by the appellant do not match the signatures of the authorised signatories of M/s Phillip Morris Ltd. The appellant did not raise any specific defence besides that of false implication in simpliciter. However, he could not controvert the depositions of the prosecution witnesses that squarely put the blame on him for the fraud he committed and also did not allege any enmity with either the FIA or any of the prosecution witnesses. As such, the same holds little, if any, weight before this Court. Sufficient evidence is available on the record to connect the appellant with the alleged offence and the prosecution has duly discharged its burden to prove the appellant's guilt

beyond reasonable shadow of doubt by producing ocular as well as documentary evidence, as such the present appeal against conviction, being meritless, is dismissed.

10. For what has been discussed above, we find that the prosecution has proved the guilt of the appellant beyond reasonable shadow of doubt and the conviction and sentence awarded to the appellant through impugned judgment does not call for any interference. As such, the conviction and sentence awarded to the appellant are maintained and resultantly, instant criminal appeal No. 833 of 2019, being merit-less, is dismissed. The appellant be taken into custody and remanded back to Central Prison Karachi to serve out his conviction warrant.

J U D G E

J U D G E