

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No. 135 of 2017

Before:

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

Appellant: Tarique Mehmood through Mr. Zubair Ahmed Rajput, advocate.
Respondent: The State through Mr. Irshad Ali, Assistant Attorney General.
Date of hearing: 02.03.2022
Date of announcement: 09.03.2022

J U D G M E N T

KHADIM HUSSAIN TUNIO, J- The appellant Tarique Mehmood son of Altaf Hussain, through instant appeal, has called in question the judgment dated 25.02.2017 (*impugned judgment*), passed by the learned Judge Special Court (Offences in Banks) Sindh at Karachi in Case No. 04/2016 (*Re-The State v. Tarique Mehmood*) emanating from FIR No. 06 of 2016, registered at Police Station FIA CBC, Karachi registered under sections 409, 420, 468, 471, and 477-A PPC. Through the impugned judgment, appellant Tarique was convicted u/s 409 PPC and sentenced to suffer rigorous imprisonment for fourteen years with a fine of Rs.1,000,000/- (*ten lac only*), in case of default whereof to suffer further imprisonment for five years. He was further convicted u/s 420, 468, 471 and 477-A PPC and sentenced to suffer rigorous imprisonment for seven years on each count with a fine of Rs.200,000/- (*two lac only*) on each count, in default thereof, he was to suffer further imprisonment of two years on each count. All the sentences on four counts 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 Shakir Abdul Ghaffar from UBL Gulshan-e-Iqbal branch and Haneef Muhammad Shaikh from UBL Abdul Hassan Isphani Road Karachi branch filed a joint written complaint through a letter directed towards Additional Director FIA dated 15.02.2016 concerning the present appellant who worked at the bank's Super Highway Branch as the Operations Manager and Chief Teller and was then transferred to the bank's Trade Centre Branch. A complaint was received by the bank regarding the appellant managing fake manual deposit receipts and making flying entries based on fake signatures of several accounts to embezzle money which led to an internal inquiry being conducted which surfaced a huge fraud scheme being run by the appellant. The appellant allegedly withdrew, from various accounts, Rs.7,308,000/- during the years 2011 to 2016. On such information, investigation was conducted and the appellant was found to be involved by the FIA, as such the FIR was lodged. He was presented before the FIA officials where he was questioned on his actions and was subsequently arrested.

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 twelve witnesses namely PW-1 **Haneef Muhammad Shaikh**, PW-2 **Qadir Khan**, PW-3 **Ali Sarwar Siddiqui**, PW-4 **Zaibi Anwar**, PW-5 **Saeed Alam**, PW-6 **Syed Abid Ali**, PW-7 **Muhammad Farhan Khan**, PW-8 **Irfan Mustafa Shah**, PW-9 **Muhammad Ramzan**, PW-10 **Liaquat Ali Khan**, PW-11 **Ali Imam Jafri** and PW-12 **Inspector Rasheed Ahmed Shaikh**. All of the witnesses produced various documents and other items which were duly exhibited. Prosecution gave up PW Shakir and PW

Sheraz Ahmed, vide statement at Ex. 5 and 15 respectively. 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 while denying that he had made any flying entries in any of the accounts and withdrew various amounts at different dates. He also claimed that he was tortured by the bank officials before he was handed over to the FIA officials. However, he neither examined himself on oath nor examined anyone else in his defence to disprove the charge. Although he produced various certificates of performance and promotion issued to him by the UBL bank.

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 both the complainants had no concern with the branch that the appellant was working in; that no internal inquiry was conducted before the registration of FIR; that various other employees of the bank were also terminated after the alleged inquiry, but the investigation officer failed to investigate them; that the audit report was not produced by the prosecution; that the receipt of cash and issuance of deposit slips was not the appellant's job description which was solely the responsibility of cashiers; that appellant was not even issued a show cause notice to explain himself before handing his custody over to the FIA officials; that the appellant was given a performance award and due to such professional jealousy, 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 of any UBL account holders, 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 *Muhammad Akram v. The State* (2009 SCMR 230) and *Najaf Ali Shah v. The State* (2021 SCMR 736)

6. Conversely, learned Assistant Attorney General has fully supported the impugned judgment and in particular has contended that prosecution has examined twelve 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 and even the defence counsel failed to cross-examine numerous witnesses despite being given the chance; that no enmity or ill-will has been proved by the appellant with the prosecution witnesses.

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

8. Perusal of record shows that complaints were received by UBL regarding missing funds from accounts of various customers at the bank and ultimately an internal inquiry was conducted by the bank's senior management which found that from the year 2011 to the year 2016, the appellant had misappropriated a total amount Rs. 7.308 million. As such, the bank's management authorized Operations Managers of UBL Gulshan-e-Iqbal and Abdul Hassan Isphani to file a complaint with the FIA and get an FIR registered for the incident, which was done. The matter was investigated by the FIA and it was found that the appellant, in all, had withdrawn an amount of Rs.7,308,000/- from various accounts of customers of the UBL bank. PW-1 Haneef Muhammad Shaikh not only produced the complaint he had sent to the FIA along with all the details of accounts and the amount

that had been fraudulently taken by the appellant, but also squarely blamed the appellant as the culprit of the crime. PW-1 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-3 who was the Operations Manager at UBL's Highway Trade Centre Branch also implicated the present appellant by stating that he had received complaints from various customers of the branch, one in particular being Irshad, all of whom noted that their balance was below what they had deposited in their accounts. He had forwarded such complaints to the Head Office whereafter an audit team was sent and during said audit, various discrepancies were found in the accounts of the customers who had filed complaints and all such transactions that were flagged were made through the present appellant's ID. He was never cross-examined on such points by the defence counsel or the appellant at trial. PW-2 Qadir Khan has also squarely named the appellant in his depositions while stating that the appellant had not only helped him open his account, but he would also collect the deposit slips from Qadir which he then never deposited and instead took the same for himself. PW-5 Saeed Alam also implicated the present appellant while stating that the appellant had firstly asked for an amount of Rs.155,000/- from Saeed who had prepared a cheque for the appellant, but had never collected the same. He then, on visiting the branch, came to know that the said amount had already been withdrawn from his account while the original cheque was still available with Saeed. PW-6 Muhammad Farhan who worked as a teller at the UBL Super Highway branch implicated the appellant while stating that the appellant used to remit various amounts through forms which were all verified by him and he would hand the same over to

Muhammad Farhan who would clear the same for him. PW-8 Irfan Mustafa deposed that he knew the appellant for a long time and he had shifted his account to UBL Super Highway branch and had deposited Rs. 2.3 million in his account through the appellant, however when he was given his account's statement in 2015 his account balance was shown to be nil. He contacted the appellant who reassured him of his money being safe, but never saw it which led to him filing a complaint with the bank. PW-11 Ali Imam Jafri, who was the auditor and conducted investigation into the alleged fraud on behalf of the UBL, squarely implicated the present appellant as well. He also produced the report in which he found that out of all the claims, he was able to establish that the appellant had embezzled an amount of Rs. 2,080,000/-. As noted above, 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. The appellant also allegedly wrote a letter and signed it wherein he admitted his involvement in the fraud. The appellant did not raise any specific defence besides that of false implication in simpliciter along with professional jealousy. However, he failed to justify the presence of his signatures over various deposit slips, nor could he controvert the depositions of the prosecution witnesses that squarely put the

blame on him for the fraud he committed. The appellant also failed to establish on what basis professional jealousy existed between him and the complainants especially when they did not even belong to the same branch as him. 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. However, considering the mitigating circumstances before us such as the appellant Tarique Mehmood's old age and the relatively minor amount which he embezzled coupled with the beauty of our legislature in always allowing a second chance for reformation, the sentence of the appellant originally awarded is converted to one already undergone by him being 7 years, 8 months and 23 days as per jail roll; that being a substantial portion of the sentence in itself. However, the appellant still has to pay the fine amount of Rs.1,800,000/- (*eighteen lac only*) or in default to suffer imprisonment for two years more. Therefore, until the appellant pays off the fine amount of Rs.1,800,000/- or undergoes further imprisonment of two years in case of failure, he shall remain in custody. The appellant is present on bail and shall be taken into custody and be returned to Central Prison Karachi until he pays the fine amount or serves the additional sentence of two years imprisonment.

11. Criminal Appeal No. 135 of 2017 stands disposed of in the above terms.

J U D G E

JUDGE