

Banking Undergone - Fine / Compensation
maintained

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THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Arshad Hussain Khan

CRIMINAL APPEAL NO.148 OF 2021

Appellant	Muzzaffar Azam S/o Abdullah Khan through Mr. Mukesh Kumar G. Karara, Advocate, assisted by Mr. Nabi Buksh Leghari, Advocate.
Respondent	The State through Mr. Ghulam Sarwar Baloch, Assistant Attorney General for Pakistan.
Complainant	Through Mr. Kashif Hanif, Advocate, assisted by Mr. Abdul Nabi, Advocate.
Date of Judgment	24.11.2022

JUDGMENT

Mohammad Karim Khan Agha, I:- The appellant Muzzaffar Azam S/o Abdullah Khan was tried in the Special Court (Offences in Banks) Sindh at Karachi in Case No.32 of 2015 in respect of FIR No.27 of 2015, u/s. 420/468/471/477-A, PPC, registered at FIA/CBC/Karachi, and vide judgment dated 22.02.2021 appellant was convicted and sentenced as under:-

- (a) Accused Muzaffar Azam S/o Abdullah is convicted under Section 420, PPC and sentenced to suffer 07 years R.I and fine of Rs.9,200,000/-. In case of non-payment of fine he shall suffer S.I for 02 years.
 - (b) Accused is convicted under section 468, PPC and sentenced to suffer 07 R.I and fine of Rs.01 lac. In case of non-payment of fine he shall further suffer S.I for 06 months.
 - (c) He is convicted under section 471, PPC and sentenced to suffer 03 years R.I and fine of Rs.1 lac. In case non-payment of fine he shall further suffer S.I for 03 months.
- All the sentences shall run concurrently.

2. The case of the prosecution in brief is that deceased Abdul Fatah Baloch was maintaining account at HBL Sindh Agriculture University Branch Tando Jam and HBL Garibabad Branch Sukkur. On 23.12.2014, Asif son of Abdul Fatah Baloch informed the HBL regarding death of his

father and requested the bank for statement of account of both the accounts. Upon receipt of statements he made complaint that total amount of Rs.46 lacs have been withdrawn from both the accounts of his father after his death. In investigation conducted by HBL it revealed that on 23.05.2014 Muzaffar Azam fraudulently transferred Rs.18 lacs from HBL Gharibabad Branch Sukkur into HBL Sindh Agriculture University Tandojam Branch by forging signatures of deceased and transferred Rs.16 lacs from the account of deceased into his personal account maintained at HBL Gharibabad Branch Sukkur. Muzaffar Azam opened another account at HBL Gharibabad Branch Sukkur on 29.05.2014 and transferred the amount from his account to the said account through cheques No.817031 through his own signature, therefore, committed fraud and unlawfully caused loss to HBL and the survivors of the deceased.

3. After usual investigation, FIR was lodged, matter was challaned and appellant was sent up to face trial before the concerned trial Court, to which he pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined 08 Prosecution Witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342, Cr.P.C in which he denied the allegations leveled against him. Appellant also examined himself on oath under Section 340(2), Cr.P.C. and produced 02 DWs in support of his defence.

5. After hearing the parties and appreciating the evidence on record the trial court convicted the appellant and sentenced him as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 22.02.2021 passed by the trial court therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. At the very outset, learned counsel for the appellant under instructions of the appellant stated that he did not press the appeal on merits provided that he was given some reasonable reduction in the sentences based on the following mitigating circumstances:-

- a) That the appellant was a first time offender and capable of reformation.
- b) That the appellant had a large family to support.
- c) That the appellant was doing his best for the legal heirs of the deceased.
- d) By not contesting the case on merits the appellant has admitted his guilt and shown genuine remorse.
- e) That the appellant had served out a major part of his sentence.

8. Based on these mitigating factors mentioned by the appellant, learned Assistant Attorney General for Pakistan and learned counsel for the complainant had no objection to the reduction in sentence to some reasonable extent.

9. We have gone through the evidence on record, especially, the handwriting expert, which clearly shows that appellant misappropriated the amount as alleged by forging signatures of his deceased brother and as such, prosecution has proved its case beyond reasonable doubt in respect of the charge against the appellant and as such, maintain his convictions.

10. With regard to sentences based on the mitigating factors mentioned above and no objection by the learned Assistant Attorney General for Pakistan and learned counsel for the complainant for reduction in sentence, we hereby reduce the sentences of the appellant Muzzaffar Azam S/o. Abdullah Khan to the time which he has already undergone in custody and waive off his fines. However, he shall pay amount of Rs.46 Lacs to HBL as compensation for the amount which was misappropriated from the bank and so recoverable. It is made clear that outstanding amount payable to the HBL, shall not stand in the way of appellant's immediate release. If there is any amount in the appellant's account, which has been blocked by the HBL, such amount shall be taken in part-payment by HBL in respect of amount of compensation, which has to be paid to HBL. The appellant shall be released unless he is wanted in any other custody case.

11. This appeal stands disposed of in the above terms.