

# IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

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

Criminal Appeal No.120 of 2013

Appellant : Muhammad Ali Rajani S/o Sharif Ali Rajani  
through Mr. Aamir Ali Azeem, Advocate  
along with Appellant present on bail.

Respondent : The State  
Through M/s. Muhammad Ahmed and  
Mukesh Kumar Khatri, Asst. Attorney  
General.

Complainant : Mst. Bakht Zeba w/o Muhammad Amin  
Through Mr. Qadir Khan, Advocate.

Date of hearing : 31.01.2019

Date of order : 31.01.2019

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

**AMJAD ALI SAHITO, J** : - Being aggrieved and dissatisfied with the judgment dated 08.03.2013 passed by the learned Presiding Officer, Special Court (Offences in Banks) Sindh at Karachi in Case No.24 of 2008 arising out of the FIR No.29/2008 registered at PS FIA, Crime Circle, Karachi, for the offence under sections 408, 420, 468, 471/109 PPC, whereby the appellant was convicted and sentenced to suffer R.I. for seven (7) years and to pay fine of Rs.7 Million and in default whereof, to suffer S.I. for twenty-one (21) months more. The benefit of section 382-B, Cr.P.C. was also extended to the appellant.

2. The brief facts of the FIR lodged on the complaint of Mst. Bakht Zeba Wd/o Muhammad Amin (Late) resident of Flat No.2-ASF, Bath Island Apartments, Muhammad Ali Bogra Road, Karachi South, stating therein that a few days ago, she visited HBL Clifton Branch

where she came to know that there is no amount lying in her account. It is further alleged that for verification she asked for a statement of her A/c. No.148500 and came to know that Rs.28,65,000/- were withdrawn by Muhammad Ali S/o Sharif Ali, CNIC No.42201-4323133-9, R/o 163-G, Fortune Homes, PECHS, Karachi East. She has deposited the same through pay order and was informed by the bank that all the amounts have been withdrawn from her account. She remembered that once upon a time, Muhammad Ali fraudulently brought her to the bank where she has the account and he said that the pay order cannot be deposited in her account and he also obtained signature on a cheque and he said that the amount will be deposited in their account because she is illiterate and he fraudulently obtained signature on the cheque and withdrew the amount from her account. Soon after asked the banks that please provide the detail of her locker as to what is the position, they told him that since the locker No.109 jointly was opened with Muhammad Ali that's why they cannot open for him and said locker was in her own name in 2001. The following items were lying in the locker, (1) original documents of Flat No.2-A, Bath Island Apartment, (2) her passport and passports of her children, (3) gold ornaments 4 coins 40 grams and 8 bangles of 12.5 tolas and 1 chain of 5 tolas, (4) savings certificates of Rs.5 lacs, (5) bank statement of her deceased husband and other important documents were also in the locker. She rushed to her house and searched for the key of her locker, he also stole the key of her locker. In addition to this in the year 2002 Rs.8000000/- were released through Brinks out of which Rs.10,00,000/- were encashed by her and the remaining Rs.70,00,000/- were invested for purchase of National Saving

Certificates from Teen Talwar Branch Karachi providing profit after every 6 months, later on, she came to know that the same was got transferred to his name. In this all offence wife of accused Arjumand Muhammad Ali is involved, she is residing in Fortune House and hence she requested that legal action may be taken against him and his family members. It is also requested that the account of the accused which is in ABN Amro, HBL Plaza Khayaban-e-Shahbaz Branch and Islamic Bank Korangi which is in his or his wife's name or is the joint account be seized. The documents of Flat No.14 Kulsoom Court near Schon circle, block-9, Clifton, Karachi, which was purchased from her rupees in his name are also in his possession, which she had purchased in 2005 and she has also proof of it and receiving the rent of that flat. She also wanted to bring on record that 98 lacs rupees her deceased husband transferred in her name during his illness and after a few days he died, which was transferred in the year 2001 in his lifetime. Therefore, she requested that action may be taken against Muhammad Ali and severe punishment be awarded to him and her looted items and rupees may be recovered to him.

3. The learned trial Court framed the charge against the accused on 29.7.2009 at Ex.2, to which he pleaded not guilty and claimed to be tried at Ex.3. In order to establish the accusation against the accused, the prosecution has examined the following witnesses:

- i. PW-1 Dawood Ahmed at Ex.4, he produced a copy of cheque as Ex.4-A.
- ii. PW-2 Mst. Bakht Zeba at Ex.5, she produced photocopy of letter dated 16.4.2008 of Hon'ble Supreme Court of Pakistan and copy of complaints Ex.5-A and 5-B, undertaking and settlement as Ex.5-C and 5-E, bank form of first locker, SS card and photocopy of CNIC as Ex.5-F to 5-H, original second locker form of HBL Clifton

Branch, SS Card and photocopy of CNIC as Ex.5-I to 5-L, photographs as Ex.5-M-1 to 5-M-5.

- iii. PW-3 Malik Khalid Kamal Khan at Ex.6, he produced seizure memo as Ex.6-A and its documents as Ex.6-A-1 to Ex-6-A-7.
- iv. PW-4 Yawar Hussain at Ex.7.
- v. PW-5 Shaista Ameen at Ex.9, she produced application form as Ex.9-A, another application form of Rs.30 lacs as Exh.9-B, third application form as Ex.9-C, an original special saving certificate as Ex.9-D-1 to P-E-7, SC-4 form as Ex.9-E.
- vi. PW-6 Muhammad Yaseen Khan was examined as Ex.10, he produced seizure memo as Ex.10-A and its documents as Ex.10-A-1 to Ex.10-A-5.
- vii. PW-7 Syed Mehmood Shah Moosvi at Ex.11.
- viii. PW-8 Abdul Khaliq Malik at Ex.12.
- ix. PW-9 Rehmatullah Domki at Ex.13,
- x. PW-10 Gulsher Mugheri at Ex.14, he produced memo of the arrest of accused at Ex.14-A.
- xi. PW-11 Fazal Muhammad Surhio at Ex.15, he produced a copy of FIR as Ex.15-A, an account of ABN Amro bank as Ex.15-B, mashirnama of the arrest of accused Rehan Qazi as Ex.15-C and
- xii. PW-12 Muneer Ahmed Ursani at Ex.16.

4. All the prosecution witnesses were cross-examined by the learned counsel for the appellants. Thereafter, the side of the prosecution was closed vide statement Ex.17.

5. Statements of the accused/appellant was recorded under Section 342 Cr.P.C. by the learned trial Court vide Ex.18, in which he denied the allegations leveled against him by the prosecution. Accused also examined on oath at Ex.19 and he produced his defence namely Hyder Ali Rajani and Hussain Ali vide Ex.20 and 21 respectively.

6. The learned trial Court, after hearing the parties and on assessment of the evidence, convicted and sentenced the appellant as stated above vide judgment dated 08.03.2013, which is impugned before this Court by way of filing the instant Criminal Appeal.

7. Learned counsel for the appellant mainly contended that the appellant is innocent and has been falsely implicated in the commission of alleged offence; that the learned trial Court has failed to appreciate the law involved in this case and the impugned judgment is liable to be not maintainable; that the learned trial Court wrongly held that the complainant has fully supported the contents of FIR; that the learned trial Court did not consider the evidence of complainant wherein she admitted that in the year 2003 she was informed by an officer of the bank that there is defect in the doors of the locker, therefore, new locker was allotted to her where all her articles were shifted and at that time while allotting new locker, she had signed the form of the bank, therefore, the plea taken by her that the cash and other articles were removed by the appellant has no legal sanctity in the eyes of law; that the learned trial Court also failed to appreciate that the complainant had herself admitted that she has not produced any documents to show the valuation of jewelry and other valuable articles; that the story narrated by the complainant in the FIR is totally false and fabricated and bare reading of the contents of FIR goes to show that the story of prosecution is highly improbable and unbelievable; that the impugned judgment is not sustainable under the law and the appellant is entitled to the acquittal.

8. Conversely, Learned Asst. Attorney General for the State as well as Learned counsel for the complainant while supporting the

impugned judgment has argued that the prosecution has successfully proved its case against the appellant beyond any shadow of reasonable doubt, therefore, the appeal merits no consideration and is liable to be dismissed.

9. We have heard the learned counsel for the appellant, Learned counsel for the complainant and learned Asst. Attorney General for the State and have minutely examined the record of the case with their able assistance.

10. In order to establish the allegations against the appellant for committing criminal breach of trust, forgery for the purpose of cheating and used the false document as a genuine, the prosecution examined the complainant Mst. Bakht Zeba (PW-2) who in her evidence deposed that she opened an account in HBL Clifton Branch, Karachi which was maintained by her since the year 2001 and at the end of the year 2007 or 2008 she visited the bank for withdrawing the amount where she was informed that your credit is not available in her account and the staff of the bank disclosed that the amount from her account has been withdrawn by accused Muhammad Ali Rajani. Appellant/accused Muhammad Ali Rajani, at that time, an employee of HBL Clifton Branch, Karachi. The locker was also maintained by her in the same branch. The bank officer also informed her that all the items/articles were removed from it and it is empty. She disclosed to the bank officer that she had kept jewelry, defence savings certificate of Rs.70 lacs and passports of her and children. The property documents which were pertained to her husband so also 04 gold coins total weight of 22 tolas were kept in the said lockers. She further disclosed that in her evidence that from the year 2004 she did not visit her locker and not even checked it. In

the year 2003, the bank officer informed that there is a defect in the doors of the locker, therefore, you may change the locker and subsequently a new locker was allotted to her and then she shifted all the above items/articles in the said locker. When she found no credit and empty locker then the complainant moved an application to the Hon'ble Chief Justice of Pakistan and same was forwarded to FIA and subsequently, FIR was registered. The appellant was arrested and in the presence of FIA officials he returned the jewelry weighting of 17 tolas and property documents as well as transferred the property i.e. Flat of Shown Circle. Three undertakings of a settlement between the complainant and the appellant are placed at Ex.5-C to 5-E, wherein the appellant admitted that he has withdrawn the amount of 41 lacs and ready to return the amount of 30 lacs subsequently he had paid a pay order of Rs.30 lacs to the complainant. In cross-examination, she denied that on 19.12.2004 her nikah was solemnized with the appellant/accused and such Nikahnama was prepared. However, she admitted that in FIR she has not stated that the appellant is her husband. The evidence of the complainant is also corroborated by the other PWs, therefore, the prosecution examined Dawood Ahmed (PW-1), who in his examination chief deposed that a cheque bearing No.4620696 was received and transferred from the account of Mst. Bakht Zeba in the account of accused Muhammad Ali Rajani for amounting of Rs.28,65,000/-. Appellant/accused Muhammad Ali Rajani and complainant Mst. Bakht Zeba was maintaining an account in our branch. The amount was transferred to the account of accused Muhammad Ali Rajani.

11. The prosecution also examined Manager, HBL Clifton Branch, Karachi as he has produced the entire record to the FIA/Investigating

Officer. PW-4 Yawar Hussain OG-II Clifton Branch, Karachi who in his evidence deposed that he was dealing with foreign currency account of the customer. The appellant visited the branch in relation to the transaction in his account which was maintained in the branch. The amount of Rs.28,65,000/- was deposited in the account of lady Mst. Bakht Zeba as the same was inactive hence, he has put the cheque in the sundry account of the bank. On the second day, accused/appellant has produced cross cheque issued by Mst. Bakht Zeba in favour of accused Muhammad Ali. Due to the inactive account of complainant Mst. Bakht Zeba, the accused was directed to ask the lady to visit the bank personally and on the same day, the account holder/complainant Mst. Bakht Zeba appeared in branch and in her presence, the account was activated and the cheque was credited in her account subsequently amount was transferred in the account of the appellant/accused. PW-5 Shaista Ameen, who in her evidence deposed that on 13.06.2003, the complainant Mst. Bakht Zeba at about 04.30 PM arrived in branch and brought 80 lacs for the investment in the same center. The complainant submitted four applications out of which two were in her name and two were in the name of accused Muhammad Ali. Four savings certificates amounting to Rs.40 lacs in favour of the appellant/accused Muhammad Ali Rajani and Rs.10 lacs each in the name of the complainant, certificates of Rs.30 lacs and Rs.10 lacs were also prepared. She has produced a copy of national savings certificate as Ex.9-A to 9-E. PW-6 Muhammad Yaseen, who in his evidence deposed that in the year 2005 he was serving as Assistant Savings Officer and from the period of 06.07.2005 to 03.09.2005 he was posted in Savings Center, Clifton Branch Karachi as Deputy National Savings Officer, he deposed that



as per record, the special savings certificate amounting to Rs.30 lacs were issued in the name of complainant Mst. Bakht Zeba whereas certificate of Rs.40 lacs on two applications was also issued in the name of accused Muhammad Ali Rajani. According to the record, the savings certificate in the name of Mst. Bakht Zeba/complainant amounting to Rs.30 lacs were also transferred in the name of accused Muhammad Ali Rajani during the tenure of Rehan Qazi, Incharge of the Savings Center. He has produced a letter of transfer of an amount of Rs.30 lacs from Mst. Bakht Zeba to Muhammad Ali, the present accused and also Nikahnama. However, in cross-examination, he admitted that he has produced Nikahnama of Mst. Bakht Zeba and Muhammad Ali but cannot say that both are husband and wife. The prosecution also examined Syed Mehmood Shah Moosvi, Pesh Imam of Mosque Khawaja Masjid Kharadar, who in his evidence deposed that Nikah was solemnized on 19.12.2004 in a flat of Bath Island, Karachi and it was signed by him. He did not know the spouse lady as her face was covered. However, he had admitted that accused present in Court is same as he was Namazi of the same mosque. The prosecution examined Abdul Khaliq, who in his evidence deposed that he was working as Assistant in HBL Head Office Karachi. He was called by FIA and shown a photocopy of Nikahnama and inquired from him whether he has attested the Nikahnama on which he has informed that signature was affixed over it, it is his forged signature. Prosecution examined (PW-9) Rehmatullah Domki, who in his evidence, deposed that after seeking protective bail, the appellant/accused joined the investigation and voluntarily admitted that he has committed a fault and he wanted to reconcile with his wedded wife/complainant and due to intervention of private persons,

it was settled that the appellant would hand over the amount of Rs.30 lacs and one apartment situated at Kalsoom apartment. He was not cross-examined though the chance was given. The prosecution examined (PW-10) Gulsher Mugheri, who in his evidence, deposed that after the transfer of Mr. Domki, the investigation was handed over to him and after the rejection of bail plea, he has arrested accused Muhammad Ali Rajani but he has no knowledge that the appellant is the husband of the complainant. The prosecution examined (PW-11) Fazal Muhammad Surhio, who in his evidence deposed that he has started an investigation and recorded the statement of PWs and arrested accused Rehan Qazi, who was Manager, National Savings Center Clifton Branch, Karachi. Lastly prosecution examined Muneer Ahmed Ursani (PW-12) I.O. of the case who in his evidence submitted that the appellant had informed him that he has settled the dispute with the complainant but the complainant made an application to the Court regarding non-compliance of settlement as the accused has not handed over jewelry of Rs.6 lacs but issued a cheque of Rs.2 lacs to complainant in the Court on 29.05.2009 for booking of gold ornaments but the shopkeeper Zaiby Jewelers returned the receipt amounting to Rs.6 lacs which were deposited in the Court. During the investigation, it was transpired that the appellant paid the remaining amount to a jeweler and later on complainant took away gold ornament in the light of settlement. Further transpired in the evidence that the accused Muhammad Ali Rajani used Nikahnama for encashment of national savings certificate. The appellant Muhammad Ali Rajani examined himself on oath in which he stated that in the year 2004, he had contracted marriage with complainant Mst. Bakht Zeba and

after 3 years i.e. in 2007, he has divorced her. In cross-examination, he admitted that the Nikah was solemnized in the year 2004. He further admitted that the savings certificates were prepared on 30.06.2003 and also admitted that he was shown as a nominee in the savings certificate, the savings certificate issued in the name of the complainant also transferred in his account on 30.06.2003. He admitted that the date of allotment of staff locker was 09.07.2003 and lockers were operated on 25.07.2003 and 02.01.2004.

12. The case of the prosecution against the appellant is that he has committed a breach of trust, forgery for the purpose of cheating and used the forged document as a genuine and transferred the entire amount in his name through forge and fabricated signature by showing the complainant as her legal wife. On the other hand, the appellant has claimed that complainant Mst. Bakht Zeba has contracted marriage with him on her own free will. He has transferred the amount in his account and used bank lockers. Whereas the complainant has denied all the allegations and stated that after the death of her second husband, she had opened an account in HBL Branch and when she visited the bank for withdrawing the amount she came to know that no credit is available in her account. The appellant/accused deposited a cheque amounting to Rs.28,65,000/- in his account from her account and subsequently, the amount was transferred in his account which shows that the appellant has managed and transferred the amount in his account. As per evidence of Shaista Ameen, UDC of National Savings Center, the complainant had brought Rs.80 lacs on 30.06.2003 for investment purpose and she prepared four special savings certificate of Rs.40 lacs which were invested in favour of

accused Muhammad Ali Rajani and Rs.30 lacs were invested in the name of the complainant. Subsequently, the amount was transferred in the name of the appellant. In cross-examination, learned counsel for the appellant put a question to the complainant that on 19.12.2004, she solemnized Nikah with the appellant/accused which she denied. Furthermore, not a single document was controverted to the complainant that all the documents including Nikahnama, cheques and national savings certificate bear her signature nor any suggestion was given to her that all documents bear her signature. Furthermore, after obtaining bail from this Court, the appellant entered into the settlement with the complainant on 17.10.2008, in which he admitted that there is an outstanding amount of 41 lacs against him and he has paid Rs.30 lacs and for the remaining amount, he has promised to pay to the complainant. The appellant in his evidence on oath deposed that he has contracted marriage with Mst. Bakht Zeba in the year 2004 but all the transactions, withdrawal of amount and transferred of savings certificate, lockers used by the appellant are in the year 2003 even the appellant himself has shown as nominee of the complainant in the savings certificate whereas, the claim of the appellant, he has contracted marriage in the year 2004. At that time he was not her husband then how he became the nominee of the complainant. Furthermore, the Nikahkhaw appeared before the Court and he has clearly stated that he had not written the Nikahnama but it was presented by the parties in his presence. The Nikah was solemnized and he had signed the same but he has not seen the complainant as her face was covered/veil. Which prove that the appellant fraudulently, dishonestly withdraw the cash amount from the bank and

transferred the saving certificate of the complainant in his name and used bank locker by using forged signature of the complainant as genuine one, hence, the appellant has committed fraud and cheating with the complainant on the pretext of his legal wife but he has failed to produce any evidence that the complainant has contracted marriage with her own free will. The prosecution has produced enough evidence in shape of documents viz. settlement deed, details of accounts, opening of accounts, cheque used by the appellant by making false and fabricated signature and the photocopy of register of locker book where signature of the appellant shows that he has used the locker of the complainant even copy of the application of national savings certificate which also bears the signature of the appellant whereas the complainant has denied from her signature and also produced the permission letter, transfer of amount of Rs.30 lacs from the account of complainant Mst. Bakht Zeba to the account of accused Muhammad Ali Rajani. She has also denied from the signature appears on Nikahnama which shows that the accused has committed criminal breach of trust, presented false documents as a genuine one, The version of complainant Mst Bakht Zeba has been fully supported by the witnesses, which substantiated with the documents produced by the witnesses. The appellant in his evidence recorded on oath, has admitted that the documents were prepared in the year 2003 but he has contracted marriage in the year 2004, hence at that time, he had no relation with the complainant.

13. Considering the above-mentioned facts and circumstances, we are of the view that prosecution has succeeded to bring the guilt of accused/appellant at home and has proved its case against the appellant beyond any shadow of a doubt. Learned counsel for the

appellant has failed to point out any material illegality or serious infirmity committing by the trial Court while passing the impugned judgment, which in our humble view, is based on an appreciation of evidence and same does not call for any interference. Accordingly, the instant Criminal Appeal was dismissed being devoid of merits by us vide short order dated 31.01.2019.

14. These are the detailed reasons for the short order dated 31.01.2019 announced by us.

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