

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

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

Criminal Appeal No.283 of 2015

Appellant : Asif Raj S/o Abdul Ghaffar
Through Habib Ahmed, Advocate

Respondent : The State
Through Mr. Muhammad Ahmed
Assistant Attorney General

Date of hearing : 19.03.2019

Date of judgment: 19.03.2019

J U D G M E N T

AMJAD ALI SAHITO, J.— Being aggrieved and dissatisfied with the judgment dated 15.10.2015 passed by learned Presiding Officer, Special Court (Offences in Banks) Sindh at Karachi in Case No.03/2001 arising out of the FIR No.01/2001 for offence under sections 409/420/468/471/477-A/109 PPC registered at PS FIA CBC, Karachi, whereby the appellant was convicted and sentenced to suffer R.I. for 07 years on each count and to pay fine of Rs.23,00,000/- (Twenty Three Lac) and in case of default thereof, he shall further suffer R.I. for 01 year. The benefit of section 382-B Cr.PC was also extended in favour of the appellant.

2. The case of the prosecution as depicted in the FIR is that the previous manager of UBL Jinnah Square Branch, Liaquat Market, Malir, Karachi namely Tahseen Ahmed Mughal during his tenure of posting there, involved himself in connivance with the co-accused for the purpose of cheating for financial gain by way of assistance in impersonation, manipulation, overlooking deliberately bypassing the rules regulations circulars and day to day banking practice and other illegal and unlawful acts, which culminated in bank losses at Rs.2.3 million. That on 2 January 2001 a fax was sent to the chief legal branch of the complainant bank by M/s. Lever Brothers Pakistan, Limited that the then manager Tahseen Ahmed Mughal acting in aid with criminal

dishonest intention for committing fraud and cheating connived and joined hand with the other culprits in as much as that without adopting the regular practice and procedure and by overlooking and bypassing the rules, regulations circulars as well as ignoring job expertise and prudence required to open under his signature a fake CD Account Number 1557-8 in favour of M/s. Lever Brothers Pakistan, Limited in UBL Jinnah Square Branch, Liaquat Market, Malir Karachi against receipt of Rs.5 lacs as a bribe and legal gratification for favoring the concerned personally namely Waqas, R/o 7/3, Block-C, Naval Heights, and Asif Raj R/o B-51 Kazimabad, Model Colony Malir Station, Karachi. All these acted jointly in a preplanned dishonest scheme of cheating and succeeded in the offence in the manner that the then manager Tahseen Ahmed Mughal admitting for the collection of cheque of Rs.2,121,715/15/- dt. 07.12.2000 drawn on MCB for clearance issued by M/s. Ali Gohar & Company which is one of the concessionaries for Ice Cream product of M/s. Lever Brothers Pakistan. The same manner two pay orders bearing No.743359 dated. 4.12.2000 and No.419030 dated 2.12.2000 of Rs.109,943/- and Rs.152,967/- respectively were also deposited and encashed. This offence came to light when in reply to the inquiries made as to why payments were not made to M/s. Lever Brothers Pakistan by M/s. Ali Gohar & Company, it transpired that in fact cheques are/were issued and received by the addressee. However, having found no clue of the receipt in the record, request for stop payment was made properly by M/s. Lever Brothers Pakistan but by that time the then manager wrote that the subject cheques and pay orders were already encashed. From the record, I made statement that the above said amounts were deposited in the fake Account Number 1557-8 in favour of M/s. Lever Brothers Pakistan collusive by impersonation, manipulation on the basis of false and fraudulent documents with the sole purpose to digit the above said amount by joining hand with criminal intent and pre planned scheme whereby the bank has been deprived off and the culprits pocketed financial gains. In the same manner two other crossed payees cheques No.015428 and 015429 for Rs.1861,768/- and Rs.566,784/- respectively of Doha Bank Limited (aggregating to Rs.2428,552/-)

of M/s. Commercial Union Insurance company deposited in the above fake account could not be encashed because of earlier instruction of stop payments. This act of deposit was definitely with dishonest intention of getting them encashed and therefore continued an offence which also requires investigation at all level for punishing the culprits. It is further stated that the opportune time with haste, the then manager allowed and facilitated those fake persons to withdrew the said amounts in toto which further substantiate the malafide intention of fraud and cheating hence his complaint for action in accordance with law. These facts were brought on records in writing by the officials of the complainant bank namely Mr. Salim Ahmed OG-III and Muhammad Zarayat Hussain cashier which may be treated as part and parcel of this complaint if read therein mutates and be treated as statement of witness to the crime. Before parting with it would be worth to bring on record the confession made in writing without any reservation by the then manager Tahseen Ahmed Mughal dt. 30.12.2000 whereby admitting guilt connivance and act of cheating and fraud for financial gain by depriving the complainant bank which statement was further supported by promise made by his father namely Ahmed Nawaz Mughal and brother Dr. Shaheen Ahmed Mughal that the loss suffered at the hands of his son/brother as a principal accused would be made good and further would extend all help/assistance in getting other remedial action over and above deposit of Rs.05 lacs, within fifteen days. This statement was given voluntarily without fear, coercion, pressure, influence or threat either by an officer of the complainant bank inside or outside. The Complainant humbly submitted in continuation of their complaint dated. 5.01.2001 received in FIA office on 5.01.2001 has further been substantiated by the written confessional statement made by Mr. Tahseen Ahmed Mughal, the then manager UBL Jinnah Square Branch Malir Karachi as mentioned in the last para of the complaint under preference, which was left over and not annexed with the complaint, hence, the same be read as documentary evidence for purpose of investigation, inquiry and registration of FIR against the persons named in our complaint along with Mr. S. Arshad Khalil Assistant posted at the relevant time at the said

branch who too, have with dishonest intention to defraud the bank joined his hand collusively with another bank official.

3. The learned trial Court framed the charge against the accused persons at Ex.B/1, who pleaded not guilty and claimed to be tried. In order to establish the accusation against the accused, the prosecution examined the following witnesses:

- (i) PW-1 Muhammad Haleem-ur-Rehman (Co-complainant)
- (ii) PW-2 Saleem Ahmed, (Mushir from UBL)
- (iii) PW-3 Shaikh Shoukat Hussain (Chief manager MCB)
- (iv) PW-4 Muhammad Asif, (Peon in Ali Gohar & Co.)
- (v) PW-5 Zafar Ahmed, (Mushir of arrest)
- (vi) PW-6 M. Naeem Khan, (Deputy Registrar Companies)
- (vii) PW-7 Muhammad Afsar Makki (Incharge Foreign Exchange Department M.C.B)
- (viii) PW-8 Mehmood Ahmed, (Manager, MCB)
- (ix) PW Inspector Gulsher Mugheri (First I.O)
- (x) PW Inspector Shamsuddin Junejo (Second I.O)

4. All the prosecution witnesses were cross-examined by the learned counsel for the accused. Thereafter, Public Prosecutor FIA/State closed the side of the prosecution vides statement at Ex.39.

5. Statements of the accused persons were recorded under Section 342 Cr.PC. by the learned trial Court in which they denied the allegations as leveled against them by the prosecution and claimed to be innocent.

6. The learned trial Court, after hearing the parties and on assessment of the evidence, convicted and sentenced the present accused as stated above vide judgment dated 15.10.2015 which is impugned before this Court by way of filing the instant Criminal Appeal.

7. Mr. Habib Ahmed, learned counsel for the appellant mainly contended that the impugned judgment is against the law and facts of the case; that the present appellant is innocent and has falsely been implicated in this case; that 08 witnesses have been examined by the prosecution but they have not deposed against the appellant in the instant case, only the evidence against the appellant is a statement of co-accused Tahseen Ahmed Mughal otherwise none is against him to connect him with the commission of offence. He lastly contended that prosecution has miserably failed to prove the case against the appellant and thus, according to him, under the above-mentioned facts and circumstances, the appellant is entitled to his acquittal.

8. On the other hand, Mr. Muhammad Ahmed, learned Assistant Attorney General has argued that there is no malafide on the part of the complainant, but he admitted that 08 witnesses have been examined but they have not deposed against the appellant and only the evidence against him is a confessional statement of co-accused Tahseen Ahmed Mughal. He lastly prayed for dismissal of the instant appeal.

9. We have heard the learned counsel for the appellant as well as learned Assistant Attorney General and have minutely perused the record with their able assistance.

10. The case of the prosecution is that the accused Abdul Ghani, Muhammad Haroon, Asif Raj and accused Tahseen Ahmed fraudulently and dishonestly opened a fictitious account in the name of M/s. Lever Brothers of Pakistan on the basis of fake stamps, fake CNIC and fake certificate of incorporation and deposited the cheque of Rs.23 lac and same was encashed. It is admitted position that the prosecution has examined 08 material witnesses including AVP Muhammad Haleem-u-Rehman. All the witnesses have not deposed against the appellant. Furthermore, the only evidence available on record against the appellant which is the confessional statement of co-accused Tahseen Ahmed Mughal which was recorded before the learned Magistrate. From the perusal of the Article 43 of Qanun-e-Shahadat Order, 1984 which reflect that when more persons than one are being tried

jointly for the same offence, and a confession made by one of such persons is proved, such confession shall be proof against the person making it and the court may take into consideration such confession as circumstantial evidence against such other person. In this case, the prosecution has not been able to produce any circumstantial evidence to connect the appellant with the commission of the offence. Furthermore, allegation against the appellant is that he has deposited a pay order/cheque in the sum of Rs.23,80000/- for clearance but neither the prosecution has been able to produce the evidence that whether signature of the appellant is on the pay order/cheque and he has visited UBL Jinnah Square Branch, Liaquat Market, Malir, Karachi nor has produced any evidence on the record that after deposit of cheque, the appellant has withdrawn the said amount to believe that the appellant is involved in the commission of offence. I/O of the case failed to collect any substantial evidence against the appellant to connect him with the commission of the offence.

11. The rule of benefit of the doubt is an essential rule of prudence, which cannot be ignored while dispensing justice in accordance with law. The conviction must be passed on any impeachment evidence and certainty of guilt and in case of any doubt arising in the prosecution case must be resolved in favour of the accused.

12. The upshot of the above discussion is that the prosecution has miserably failed to bring home the guilt of the appellant/accused beyond reasonable doubt and it is settled proposition of law that for giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubts, if there is a single circumstance which creates reasonable doubt about the guilt of the accused, then the accused will be entitled to the benefit. In this respect, reliance can be placed upon the case of *MUHAMMAD MANSHA v. THE STAE* reported in *2018 SCMR 772*, wherein the Hon'ble Supreme Court of Pakistan has held that:

“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to be benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, “it is better than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v. The State (2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749).

13. In this case, the learned trial Court has not followed the evidence in its true perspective and thus arrived at conclusion by holding the appellant guilty of the offence. Resultantly, the instant appeal was allowed. The conviction and sentence awarded to the appellant by the learned trial court vide impugned judgment dated 15.10.2015 was set aside and he was acquitted by extending the benefit of the doubt. The appellant was on bail and his bail bond was canceled and surety was discharged.

14. These are the detailed reasons for the short order dated 19.03.2019.

JUDGE.

JUDGE