

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Shamsuddin Abbasi.

Criminal Appeal No.425 of 2011

Appellant Abdullah Soomro son of Muhammad Azeem Soomro through Mr. Kazi Abdul Hameed Siddiqui, Advocate a/w Mr. Muhammad Nawaz Tahir, Advocate.

Respondent The State through Mr. Mukesh Kumar Khatri, Assistant Attorney General.

Criminal Appeal No.447 of 2011

Appellant Jamil ur Rehman son of Rehman Khan through Mr. Irshad Ali Kehar, Advocate.

Respondent The State through Mr. Mukesh Kumar Khatri, Assistant Attorney General.

Criminal Appeal No.448 of 2011

Appellant Syed Ali Humayun son of Syed Ali Muzaffar through Mr. Shahid Hussain Soomro, Advocate.

Respondent The State through Mr. Mukesh Kumar Khatri, Assistant Attorney General.

Dates of hearing 11.08.2020 and 18.08.2020

Date of Judgment 21.09.2020

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JUDGMENT

Shamsuddin Abbasi, J:- Appellants Abdullah Soomro, Jamil-ur-Rehman and Syed Ali Humayun were tried by Special Court {Offences in Banks} Sindh, at Karachi, in Case No.43 of 1999, arising out of FIR No.21 of 1999 registered at P.S. FIA CBC, Karachi, for the offences punishable under Section 409, 477-A and 34, PPC read with Section 5{2} of PCA-II of 1947. Through a judgment dated 15.10.2011 they were convicted and sentenced to undergo rigorous imprisonment for seven years each and to pay a fine of Rs.250,000/- {Rupees two hundred fifty thousand} each, in default whereof each of them were ordered to suffer simple imprisonment for twenty one months' more,

however, the benefit in terms of Section 382-B, Cr.P.C. was extended in favour of the appellants.

2. FIR in this case has been lodged on 20.04.1999 whereas the incident is shown to have taken place in the year 1999. Complainant Muhammad Naseem Qureshi, Manager, United Bank Limited, Korangi Industrial Area Branch, Karachi, has stated that the incident has taken place in the year 1999 and at that time accused Syed Ali Humayun, Abdullah Soomro and Jamil-ur-Rehman were employee of bank and posted in his Branch. On 03.02.1999 an account No.2252 was opened in his branch in the name of Ali Ashraf and on the same day a cheque No.0912301 of Rs.300,000/- {Rupees three hundred thousand} was presented, amount whereof was paid by accused Syed Ali Humayun, employee No.199087 and Abdullah Soomro, employee No.324034, without waiting clearance of the said cheque and passed suspense A/c clearing voucher dated 03.02.1999 and the said cheque lodged in clearing was received unpaid on 04.02.1999 and such amount of cheque was still outstanding. Another account No.2153 was opened on 27.10.1998 in the name of one Tahir Hussain Khan without any introduction and NIC and a cheque No.0636916 dated 03.02.1999 of Rs.500,000/- {Rupees five hundred thousand} was deposited in the said account, amount whereof was paid by accused Syed Ali Humayun and Abdullah Soomro without waiting its clearance and passed suspense A/c clearing voucher dated 03.02.1999 and the said cheque lodged in clearing was received unpaid on 04.02.1999 and such amount of cheque was still outstanding. The account holder informed that he has not received cheque amount of Rs.500,000/- {Rupees five hundred thousand} despite cash received by accused Syed Ali Humayun and Jamil-ur-Rehman. On receipt of complaint from Manager, Korangi Industrial Area, Karachi, a case under Sections 409, 420, 468, 471, 477-A and 109, PPC read with Section 5{2} of Act-II of PCA, 1947 was registered at P.S. FIA, CBC, Karachi, vide FIR No.21 of 1999 by Chaudhry Sardar Khan, Assistant Director, FIA on behalf of the State.

3. Pursuant to the registration of FIR, the investigation followed and in due course challan was submitted before the Court of competent jurisdiction under the above-referred Sections, whereby

the appellants were sent-up to face the trial while accused Muhammad Khalil Khan was acquitted under Section 249-A, Cr.P.C. vide order dated 23.10.2001 as he was not sent up for trial by the prosecution while submitting final challan.

4. A charge in respect of offences punishable under Sections 409, 477-A and 34, PPC read with Section 5{2} of PCA-II of 1947 was framed against appellants at Ex.2, to which all of them pleaded not guilty and claimed to be tried.

5. At trial, the prosecution has examined as many as nine witnesses namely, Inspector Nizamuddin Shaikh as PW.1 at Ex.6, complainant Muhammad Naseem {Retired Bank Manager} as PW.2 at Ex.7, Saeed Akhtar {bank employee} as PW.3 at Ex.9, Iftikharuddin {banker} as PW.4 at Ex.10, Ganusoo {banker} as PW.5 at Ex.11, Chaudhry Sardar Khan {Assistant Director FIA} as PW.6 at Ex.15, A.F.M. Fateh as PW.7 at Ex.16, Haji Khan as PW.8 at Ex.17 and Muneer Ahmed Shah {Inspector/handwriting expert FIA} as PW.9 at Ex.21. The witnesses exhibited number of documents in evidence. Vide statement Ex.22, the prosecution closed its side of evidence.

6. Statements under Section 342, Cr.P.C. of appellants Jamil-ur-Rehman, Syed Ali Humayun and Abdullah Soomro were recorded at Exs.23, 24 and 25 respectively, wherein they denied the commission of offence and professed their innocence. They opted not to examine themselves on Oath under Section 340(2), Cr.P.C. and did not lead any evidence in their defence.

7. Trial Court, on conclusion of trial and after hearing the learned counsel for the parties as well as assessment of evidence on record, convicted the appellants as detailed in para-1 {supra} vide judgment dated 15.10.2011, impugned herein. Feeling aggrieved by the convictions and sentences, referred herein above, the appellants have preferred their respective appeals.

8. Since all the three appeals are outcome of a common judgment, therefore, we deem it appropriate to decide the same together through a single judgment.

9. The learned counsel appearing on behalf of appellant Syed Ali Humayun has contended that he is innocent and has been falsely implicated in this case on account of malafide intention and ulterior motives. It is next submitted that the offence is outcome of the audit report but no audit report has been produced in Court during trial. The appellant is not the beneficiary of the alleged transaction. It is also submitted that the convictions and sentences recorded by the learned trial Court are bad in law and facts and without application of a judicial mind to the facts and surrounding circumstances of the case. It is also submitted that the matter needs sympathetic consideration with regard to innocence of the appellants particularly when no incriminating evidence has been brought on record. The learned counsel has further added that the prosecution has failed to produce any incriminating evidence in support of its case and the witnesses examined by the prosecution have not assigned any specific role to the appellant with regard to his involvement in the commission of crime. There are serious dents in the investigation and the learned trial Court has not properly evaluated the evidence brought on record as well the contradictions and discrepancies on material aspects of the matter which has demolished the whole case of the prosecution. The learned counsel while summing up his submissions has prayed that the prosecution has miserably failed to prove its case against the appellant and, thus, according to him, under the abovementioned facts and circumstances of the case the conviction and sentence recorded by the trial Court through impugned judgment is liable to be set-aside and the appellant is liable to be acquitted of the charge. Reliance has been placed on the cases of *Director General FIA and others v Kamran Iqbal and others* {2016 SCMR 447} and *Abdul Rashid Nasir and others v The State* {2009 SCMR 517}.

10. The learned counsel appearing on behalf of appellant Abdullah Soomro has adopted the same arguments as advanced by the learned counsel for appellant Syed Ali Humayun. He, however, added that no incriminating evidence has been brought on record against the appellant to substantiate his involvement in the commission of crime with malafide and dishonest intention and he has wrongly been

convicted by the learned trial Court without assigning cogent and valid reasons.

11. The learned counsel appearing on behalf of appellant Jamil-ur-Rehman has submitted that the witnesses in their respective statements have not assigned any specific role to the appellant and the prosecution has failed to bring on record any incriminating evidence against him despite that the learned trial Court awarded conviction to him, which is not sustainable in the eyes of law.

12. In contra, the learned State Counsel while supporting the impugned judgment has argued that the prosecution has successfully proved its case against the appellants beyond any shadow of doubt. He further submits that the prosecution has examined nine witnesses and all of them have supported the case of the prosecution and fully implicated the appellants with the commission of offence without major contradictions and discrepancies. No evidence of enmity in terms of malafide or ulterior motive has been brought on record by the appellants, which might have actuated the complainant and the witnesses to falsely implicate the appellants with the commission of offence. The witnesses are officials of bank and police and there is no reason to disbelieve their evidence, which is consistent and confidence inspiring, duly supported by documentary evidence. Finally, submitted that the impugned judgment is based on fair evaluation of evidence and calls for no interference and prayed for dismissal of appeals.

13. We have given anxious consideration to the submissions of learned counsel appearing for the appellants and the learned Assistant Attorney General and perused the entire material available before us with their able assistance.

14. To arrive at a just and fair decision, we deem it appropriate to assess the evidence brought on record by the prosecution against the appellants minutely.

15. PW.1 Inspector Nizamuddin Ex.6 is the witness who has only submitted final challan with the permission of the competent

authority and deposed that he did not sent-up accused Abdullah Soomro and Khalil Khan for trial but his recommendations were not accepted and trial Court joined them to face the trial.

16. PW.2 complainant Muhammad Nasim {Ex.7} has deposed that he took over charge of United Bank Limited, Korangi Industrial Area Branch on 17.04.1999 from outgoing Manager Muhammad Khalil Khan. Accused Ali Humayun remained posted as Manager in the said branch, accused Jamil-ur-Rehman was posted as Assistant while accused Abdullah Soomro was second officer. At that time the branch was being audited and he was directed by the competent authority to lodge FIR against Syed Ali Humayun, Abdullah Soomro, Jamil-ur-Rehman and Muhammad Khalil Khan on the recommendation of audit report and based on such directions he filed a complaint. Accused Ali Humayun opened a fake account No.2153 in the name of Muhammad Tahir Hussain on 27.10.1998 without reference of any account holder. The complainant has further deposed that he called said account holder Muhammad Tahir Hussain and showed him the account opening form and S.S. Card, who denied to have open the account and denied his signature on it. He further deposed that after opening the said account, accused Humayun and Abdullah Soomro debited Rs.500,000/- and Rs.300,000/- on 03.02.1999 to the suspense account clearing adjustment through two debit vouchers under their signatures and then credited Rs.500,000/- to the said fake account through credit voucher dated 03.02.1999 under their signatures. There was a bank account No.2252 in the name of Ali Ashraf and accused Ali Humayun credited a sum of Rs.300,000/- in the said account on 03.02.1999 through credit voucher prepared and passed by Ali Humayun under his signature and on the same day such amount was withdrawn by him fraudulently . The cheque of Rs.500,000/- returned from Habib Bank Limited was received by accused Jamil-ur-Rehman and he replaced the debit voucher by Cheque No.0636916 for Rs.500,000/-. In his cross-examination, complainant has admitted that accused Abdullah Soomro has no role for opening forged A/c No.2153. He further admitted that cheque of Rs.500,000/- does not bear the signature of accused Abdullah Soomro and the said cheque was passed by the single signature of accused Ali Humayun. He stated that amount of said cheque was

withdrawn by the debit voucher and subsequently the said cheque was replaced but the debit voucher is not available on record. He further admitted that accused Ali Humayun was transferred on 04.02.1999. He admitted that audit was completed and he made complaint on the recommendation of audit record but the same was not supplied either to the FIA or filed in Court. He admitted that posting of cheque in ledger is the duty of machine operator. He admitted that cheque was not cancelled by two authorized officer as such the cashier ought not to have made payment. This witness has admitted that he has not fixed responsibility on the cashier in his complaint. He admitted that Exs.7/D, 7/E and 7/F bear the signatures of two authorized officers. He also admitted that cheque of Rs.300,000/- was subsequently adjusted. He admitted that accused Jamil-ur-Rehman being Clerk had no authority to sign any instrument. He admitted that they did not inquire about A/c holder whose cheque was returned un-passed in clearing and received by accused Jamil-ur-Rehman.

17. PW.3 Saeed Akhtar Ex.9 has deposed that on 03.02.1999 he received two credit vouchers of Rs.300,000/- and Rs.500,000/- Ex.7/H and Ex.7/F, which bear the signatures of Abdullah. He made entry of the said vouchers in the balance sheet and on the basis of said vouchers the amount was credited in the respective accounts and subsequently it was detected that the cheques were returned in clearing as un-paid whereas the amounts in the respective accounts were credited illegally. In his cross-examination this witness has admitted that he had posted debit voucher of Rs.500,000/- correctly as per bank procedure. He admitted that cheque of Rs.500,000/- was received and tokened and then it came to him for posting. He admitted that credit voucher for Rs.500,000/- bear signatures of Syed Ali Humayun and Abdullah Soomro whereas credit voucher for Rs.300,000/- only bears signature of Syed Ali Humayun and Rs.300,000/- has been adjusted in the bank. He admitted that Rs.500,000/- were withdrawn from the account by way of debit cash voucher, duly signed by two authorized officer Syed Ali Humayun and Abdullah Soomro. He admitted that said debit vouchers are not produced. He admitted that if amount is credited in somebody's account by way of debit cash voucher and subsequently if the cheque

of the same amount is deposited in the account, the debit voucher is destroyed. He admitted that balance sheet bears cheque No.0636916 in his handwriting. He admitted that Ex.7/G is the same cheque whose number has been posted by him in his writing. He admitted that cheque Ex.7/G does not bears the cancellation of three officers as required, it only bears the signature of Syed Ali Humayun.

18. PW.4 Iftikharuddin {Ex.10} has deposed that in the year 1999 he was posted as OG-II in UBL, Korangi Industrial Area Branch. In February, 1999 two deposit vouchers of Rs.300,000/- in CD account No.2252 and Rs.500,000/- in CD account No.2153 were deposited, which were debited in suspense account and cheques were sent in clearing. On the same day cheque of Rs.300,000/- was encashed whereas cheque of Rs.500,000/- was credited by way of debit card voucher. In cross-examination, he stated that on cheques Ex.7/J and Ex.7/K cancellation signature is not of accused Abdullah Soomro. He admitted that cheque of Rs.500,000/-, received by accused Jamil-ur-Rehman after it was dishonored by the bank, the clearing department has no concern in respect of payment. He further admitted that cheque of a party sometime given to the colleague as curtsey. He also admitted that receiving cheque by accused Jamil-ur-Rehman does not come within the definition of fraud. He admitted that amount of more than Rs.10,000/- used to be paid after making two cancellation signatures. He stated that sometime it used to be paid with one cancellation signature and later on second signature used to be made.

19. PW.5 Ganusoo is the token clerk of UBL Korangi Industrial Area Branch. On 03.02.1999 he issued token for cheque of Rs.300,000/- and also issued token for cheque of Rs.500,000/- on 04.02.1999. At that time Syed Ali Humayun was Manager of the bank, Abdullah Soomro was Incharge of the cash and Tanveer Ahmed, Altaf Hussain, Muhammad Siddique and Laiq Ahmed were cashiers. He deposed that token for two cheques {Ex.7/G and Ex.7/K} were issued by him and during his tenure there was no complaint from any client/customer for any misappropriation. In his cross-examination, this witness has admitted that none of the staff of the branch came for token of cheque of Rs.500,000/-.

20. PW.6 Chaudhry Sardar Khan Ex.15 is the witness who lodged FIR on the written complaint of Nasim Qureshi, Manager, UBL, Korangi Industrial Branch. He also arrested accused Muhammad Khalil on 25.06.1999 and accused Jamil-ur-Rehman on 26.06.1999. He also prepared seizure memo of certain documents and submitted interim challan and then the investigation was transferred to Inspector Haji Khan. In cross-examination, he admitted that S.S. card, A/c opening form the debit voucher does not bear the signature of accused Jamil-ur-Rehman.

21. PW.7 A.F.M. Fateh {Ex.7} has deposed that in the year 1999 he was director of M/s Karwan East Fabric Limited. Accused Syed Ali Humayun approached him and requested for a cheque of Rs.500,000/- to meet the target assigned to him by the bank and promised to return the cheque within a week. He gave him cheque of HBL, Korangi Industrial Branch and thereafter Syed Ali Humayun did not return. He received phone call from wife of accused Syed Ali Humayun, she requested to give statement as some false case has been registered against him. He was called by I.O. and recorded his statement.

22. PW.8 Inspector Haji Khan {Ex.8} has obtained specimen signatures of accused Syed Ali Humayun and Abdullah Soomro before the Magistrate and sent the same for expert opinion and thereafter the case was transferred to Inspector Faqir Muhammad. In cross-examination, he admitted that in his report he mentioned accused Jamil-ur-Rehman as innocent and recommended that he may not be sent-up for trial.

23. PW.9 Inspector Muneer Ahmed Shah is the handwriting expert who had examined the specimen signatures and handwriting of accused Ali Humayun, Abdullah Soomro and Jamil-ur-Rehman and issued his report.

24. The case of the prosecution is that the appellants being public servants hatched a plan to defraud UBL and in pursuance thereof knowingly, dishonestly and fraudulently opened a fictitious account in the name of one Tahir Hussain Khan, without completing the

required formalities viz without obtaining copy of NIC and introduction thereof and fraudulently deposited two cheques of Rs.500,000/- {Rupees five hundred thousand} and Rs.300,000/- {Rupees three hundred thousand} without obtaining confirmation and clearance from clearing house, knowingly and dishonestly made such payments through debit vouchers, thereby committed criminal breach of trust, forgery and caused loss to the bank.

25. Insofar as the case against appellant Jamil-ur-Rehman is concerned, he has not been attributed any specific role and no incriminating evidence has been brought on record against him with regard to signing of any document. Furthermore, the investigating officer, Inspector Haji Khan, in his cross-examination has admitted that appellant Jamil-ur-Rehman was found innocent and he recommended for placing his name in column No.2 of the challan. Besides, PW Chaudhry Sardar Khan has deposed that he has not found signature of appellant Jamil-ur-Rehman on S.S. card, account opening form and deposit vouchers. As regards appellant Abdullah Soomro is concerned, the only allegation against him is that he intentionally signed suspense debit vouchers, but not a single document has been brought on record by the prosecution to establish his involvement in the commission of crime with *mens rea*. Therefore, no adverse inference can be drawn against him and there is every possibility that he has signed/verified suspense debit vouchers in routine more particularly when Manager of the bank himself was involved in the scam. Thus, in view of this back ground of the matter, the convictions and sentences awarded to appellants Jamil-ur-Rehman and Abdullah Soomro are unsustainable in the eyes of law.

26. To constitute an offence under section 409, P.P.C. there must not only be entrustment but dishonest, misappropriation or conversion to one's own use or dishonest disposal of property by the offender. As is clearly obvious from the scrutiny of evidence, such ingredients are absolutely lacking. There is no evidence to conclude that the cheques were encashed by appellants Jamil-ur-Rehman and Abdullah Soomro or by someone else acting on their behalf and the cash was misappropriated by them. So far as applicability of Section 409, P.P.C. is concerned, it is not the case

of prosecution that any property was ever entrusted to appellants Jamil-ur-Rehman and Abdullah Soomro which was misappropriated by them. Insofar as Section 477-A, PPC is concerned, the prosecution has not been able to bring on record any evidence against appellants Jamil-ur-Rehman and Abdullah Soomro, but successfully established its case against appellant Syed Ali Humayun, who has managed false documents and opened a fake account in the name of Tahir Hussain. During investigation said Tahir Hussain has categorically denied to have opened the said bank account and disowned his signatures.

27. A close scrutiny of the evidence has led us to a conclusion that all the pieces of evidence produced by the prosecution against appellants Jamil-ur-Rehman and Abdullah Soomro are not worthy of reliance to prove alleged offence against them and are sufficient to advance their case for acquittal rather than to maintain conviction because it is a cardinal principle of administration of criminal justice that if any reasonable doubt arises in the prosecution case, the benefit thereof must be extended to the accused not as a matter of grace or concession but as a matter of right. Likewise, it is also well-embedded principle of criminal justice that there is no need of so many doubts in the prosecution case rather any reasonable doubt arising out from the prosecution evidence, pricking the judicious mind, is sufficient for acquittal of the accused. Rule for giving benefit of doubt to an accused has been laid down by the Hon'ble Supreme Court in the case of *Muhammad Mansha v. The State* (2018 SCMR 772) wherein it has been ruled as under:-

*“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 the 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 that ten guilty persons be acquitted rather than one innocent person be convicted”. Reliance in this behalf can be made in the cases of *Tariq Pervez v. The State* (1995 SCMR 1345), *Ghulam Qadir and 2 others v. The State* (2008 SCMR 1221), *Muhammad Akram v. The State* (2009 SCMR 230) and *Muhammad Zaman v. The State* (2014 SCMR 749).”*

28. The facts and the circumstances discussed hereinabove have led us to an irresistible conclusion that the prosecution has failed to prove its case against appellants Jamil-ur-Rehman and Abdullah Soomro beyond shadow of reasonable doubt. Thus, the conviction and sentence awarded to them is unsustainable in law. We are, therefore, persuaded to allow Criminal Appeal No.425 of 2011 and Criminal Appeal No.447 of 2011, which are accordingly allowed. The impugned judgment of conviction and sentence recorded against appellants Jamil-ur-Rehman and Abdullah Soomro is set-aside. Consequently they stand acquitted of the charge by extending them the benefit of doubt. The appellants Jamil-ur-Rehman and Abdullah Soomro are already on bail. Their bail bonds stand cancelled and sureties stand discharged.

29. As regard appellant Syed Ali Humayun is concerned, the prosecution has brought on record sufficient material against him in shape of ocular and documentary evidence. PW.2 complainant Muhammad Naseem {Ex.7} while recording his evidence has deposed full account of the incident and specifically involved him in the commission of crime. Complainant has deposed that appellant Syed Ali Humayun while posted as Manager, UBL Korangi Industrial Area Branch, opened a fake account bearing No.2153 in the name of one Tahir Hussain without fulfilling legal requirement and placing a reference of any account holder whereby he debited a sum of Rs.500,000/- {Rupees five hundred thousand} to the suspense account clearing adjustment through a debit voucher and credited the amount in the fake account and then fraudulently withdrawn the same. Complainant has further deposed that he called account holder Tahir Hussain, who denied to have opened bank account and disowned his signatures on S.S. card and account opening form and stated that the said account is fake and his signatures are forged. Complainant has also deposed that he is well conversant with the handwriting and signature of appellant Syed Ali Humayun as he worked with him. He has produced account opening form of Tahir Hussain at Ex.7/B and admitted signatures of appellant Syed Ali Humayun on it. He also produced S.S. Card of Tahir Hussain at Ex.7/C and stated that

appellant Syed Ali Humayun verified the signature of account holder under his two signatures. Complainant has been supported by PWs Saeed Akhtar {Ex.9} and Iftikharuddin {Ex.10}, who have narrated the same story as deposed by complainant and acknowledged signatures of appellant Syed Ali Humayun on debit vouchers and bank account slip. Thus, it has become clear beyond doubt that appellant Syed Ali Humayun being public servant during his posting as Manager of the said branch misused his official position and unlawfully opened fake and fictitious account in the name of Tahir Hussain and subsequently withdrawn a sum of Rs.500,000/- {Rupees five hundred thousand} through a fake cheque illegally and unlawfully, thereby committed criminal breach of trust, forgery and caused loss to the bank. Insofar as account No.2252 in the name of Ali Ashraf is concerned, the prosecution has brought on record that it was a genuine account but an amount of Rs.300,000/- {Rupees three hundred thousand} was withdrawn fraudulently and later on the bank recovered the said amount and no loss was caused to the bank.

30. The prosecution, in our considered opinion, has led trustworthy evidence to prove the case against appellant Syed Ali Humayun beyond any shadow of doubt and when once the burden of proof is discharged by the prosecution with cogent evidence then the appellant becomes heavily burdened to prove his innocence through reliable evidence. The appellant Syed Ali Humayun did not opt to appear on Oath under Section 340{2}, Cr.P.C. nor examined any witness to prove his innocence. There is no evidence on the record that the prosecution witnesses have some grudge against appellant Syed Ali Humayun to falsely implicate him in the instant case. We have noticed that in rebuttal to overwhelming prosecution evidence, the appellant has failed to produce any tangible material to rebut the trustworthy and confidence inspiring evidence of the prosecution witnesses. As to the case law cited by the learned counsel for appellant Syed Ali Humayun, in support of his submissions, in our humble view, the facts and circumstances of the said cases are distinct and different from the present case. Therefore, none of the precedents cited by the learned counsel are helpful to him.

31. Considering the facts and circumstances, as discussed above, we are of the humble view that the prosecution has successfully proved its case against appellant Syed Ali Humayun beyond any shadow of doubt. His counsel has failed to point out any material illegality or serious infirmity committed by the learned trial Court while convicting him through impugned judgment dated 15.10.2011, which in our humble view is based on fair evaluation of evidence. Consequently, the Criminal Appeal No.448 of 2011, filed by appellant Syed Ali Humayun, is dismissed as being devoid of any merit. However, keeping in view the age of appellant which is 71 years and mitigating circumstances on account of long standing criminal proceedings since 1999, we deem it appropriate to reduce the sentence awarded to appellant Syed Ali Humayun in respect of all the offences he is charged with as already undergone. According to jail roll he has served sentence of one year, three months and nine days {including remissions}, therefore, in our humble view it would serve both the purposes of deterrence and reformation, if the sentence is modified and reduced to one already undergone. Accordingly, the sentence awarded to appellant Syed Ali Humayun is modified and reduced to one already undergone. As to the sentence awarded in lieu of fine, the same shall remain same if the appellant fails to pay the fine of Rs.250,000/- {Rupees two hundred fifty thousand} as imposed by the learned trial Court.

32. A copy of this judgment is forwarded to the learned trial Court for recovery of fine from the appellant without any further notice and on his failure to comply, send him to jail and start proceedings to recover fine as arrears of Land Revenue.

33. The captioned appeals stands disposed of in the foregoing terms.

JUDGE

JUDGE