

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No. 32 of 2018

Before:

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

Appellant: Yawar son of Gul Zaman through Mr. Asad
Manzoor Halepota, advocate.

Respondent: The State through Mr. Irshad Ahmed, Deputy
Attorney General.

Date of hearing: 10.02.2022

Date of announcement: 18.02.2022

JUDGMENT

KHADIM HUSSAIN TUNIO, J- Through captioned criminal appeal, appellant Yawar son of Gul Zaman has challenged the impugned judgment dated 13.12.2017, passed by the learned Judge Special Court (Offences in Banks) Sindh at Karachi in Case Nos. 100/2011 (*Re-The State v. Yawar s/o Gul Zaman*) emanating from FIR No. 49 of 2011 of FIA CBC, Karachi registered under sections 409/419/420/467, 471/109/34 PPC. Through the impugned judgment, appellant Yawar was convicted u/s 468 PPC and sentenced to suffer rigorous imprisonment for seven years with a fine of Rs.10,000/-, in case of default thereof to further undergo simple imprisonment for three months more. He was also convicted u/s 471 PPC and sentenced to suffer rigorous imprisonment for three years with a fine of Rs.10,000/-, in default whereof to further undergo simple imprisonment for three months more. He was lastly convicted u/s 420 PPC and sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.500,000/-, in default whereof to suffer simple imprisonment for one year more. All the sentences were ordered to run concurrently and benefit of S. 382(b) Cr.P.C was also extended to the appellant.

2. Precisely, facts of the prosecution case are that one Muhammad Habib from NIB Bank, Muhammadi House I.I Chundrigar road Karachi branch filed a written complaint regarding several customers of their bank in different branches complaining about withdrawal of cash through encashment of forged cheques online which were not authorised by them. This allegedly caused the bank a loss of Rs.6,694,000/-. On such information, investigation was conducted and several people were found to be involved, amongst whom was the appellant who had presented several counterfeit cheques in the bank to get them encashed. He was caught red-handed while encashing counterfeit cheques and therefore arrested.

3. After registration of FIR, usual investigation was conducted by the Investigating officer and on its completion a challan was submitted before the trial Court. After compliance with section 241-A Cr.P.C, a charge was framed against the accused to which he pleaded not guilty and claimed to be tried. At the trial, prosecution examined in all four PWs namely PW-1 **Waqas Ahmed Ghori**, PW-2 **Syed Haroon Akhtar**, PW-3 **Syed Imran Ali** and PW-4 **Inspector Ahmed Jan Khan** who produced various documents and other items, duly exhibited. Thereafter prosecution side was closed. Statement of accused was recorded under section 342, Cr.P.C, where he denied the prosecution case in toto and pleaded his false implication while admitting his presence in the bank at the relevant time in relation to his office work with M/s Al Ahad Export Company. However, he did not examine himself on oath in disproof of the charge, nor did he examine anyone else in his defence.

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 the fake cheques had not been recovered from the appellant; that the appellant has not presented any fake cheques in the concerned bank for

encashment; that no customer/account holder has been made a witness in the case; that the person who made the initial complaint has not been examined; that no copy of CNIC has been produced at the time of encashment of the fake cheques; that several co-accused have already been acquitted; that the appellant is not beneficiary of the alleged fraud; that name of appellant does not transpire in the FIR; that the CCTV footage merely shows the presence of the appellant at the bank which was due to his work as he managed accounts for M/s Al Ahad Export Company; that no evidence has been produced before the court to suggest that the appellant had prepared the fake cheques; that the PW-1 Waqas Ahmed had been shown the appellant in FIA center and asked by FIA officials to identify him before Court; that the appellant is innocent and has been falsely implicated by the FIA Officials, as such he prays for the acquittal of the appellant while relying on the case law titled ***NOTICE TO POLICE CONSTABLE KHIZAR HAYAT; In the matter of (PLD 2019 Supreme Court 527)***.

6. Conversely, learned Deputy Attorney General has contended that prosecution has examined four 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; that the appellant has failed to disclose the specific work he was there to do in the bank; that the cheques were recovered and produced by the bank; that no enmity or ill-will has been alleged or proved by the appellant with the prosecution witnesses; that the CCTV footage has also shown the presence of the appellant at the concerned bank; that the appellant was arrested red-handed while committing the alleged offence. He has placed his reliance on case law reported as ***GHAZANFAR alias PAPPU v. The STATE (2012 SCMR 215)***.

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

8. Perusal of record shows that several incidents of false cheque encashment were reported by Muhammad Habib of NIB Bank Karachi through a written complaint. The matter was looked into by the FIA and it was found that the appellant along with the rest of his gang had encashed a total of 59 forged cheques of different accounts at various branches of NIB Bank while the originals leaves of the said cheques had remained with the owners and were presented before the Court. As such, the appellant along with co-accused namely Muhammad Raheel Qureshi, Imran Memon, Syed Arif Hussain Rizvi, Farhan, Muhammad Irshad and Kashif Johny were arrested for causing a total loss of Rs. 6,694,000/-whereas the rest of their accomplices became fugitives of the law. The appellant Yawar was convicted by the trial Court, whereas the co-accused were acquitted of the charges levelled against them. PW-1 Waqas Ghouri, former cashier at NIB Bank's Eidgah branch not only pointed out the appellant before the trial Court, but also identified him in the CCTV footage to be the same person who had encashed a cheque dated 03.02.2010 amounting to Rs.33,500/-and he squarely put the appellant as the culprit of the crime while further stating that the appellant Yawar had received the cash from him after the cheque's encashment. CCTV footage available in Court record also shows the appellant present at the bank at the relevant date and time. 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 PW regarding the appellant presenting the said cheques. Oral as well as eye-witness account furnished not only found support by the CCTV footage presented, but also by various documents produced by the prosecution *i.e.* the forged cheques and their original cancelled out cheques having the similar number. The I.O had also recovered a computer which was allegedly used to make these counterfeit cheques which further strengthens the prosecution case. It is also pertinent to note here that the appellant Yawar never denied his presence at the bank, rather admitted the same in his statement u/s 342 Cr.P.C. However, he claimed that he

was present at the relevant time, in the Banks, in connection of his office work with M/s Al Ahad Export Company, but he has failed to disclose what work that was and what specific accounts he managed for the company he worked for. 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. It may be mentioned here that the acquittal of the appellant's co-accused is of no assistance to the appellant as there was much lesser evidence against them and as such their cases are distinguishable from that of the appellant.

9. However, considering the mitigating circumstances before us, such as the appellant facing the agony of a long trial, the amount of fraud itself being comparatively on the lower end and the beauty of our legislature in always allowing a chance for reformation, the sentence of the appellant originally awarded is converted to one already undergone by him, being a substantial portion in itself. However, the appellant still has to pay the fine amount of Rs. 520,000/- (*five lac and twenty thousand only*) or in default to suffer imprisonment for one year more as ordered by the trial Court through the impugned judgment. Therefore, until the appellant pays off the fine amount of Rs. 520,000/- or undergoes further imprisonment of one year 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 one year imprisonment.

10. Criminal Appeal No. 32 of 2018 stands disposed of in the above terms.

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