

# IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No.239 of 2011

Criminal Appeal No.276 of 2011

**Present:**

**Mr. Justice Mohammad Karim Khan Agha**

**Mr. Justice Zulfiqar Ali Sangi.**

Appellants : 1. Faheem Arshadullah s/o Muhammad Arshadullah through Mr. Khaleeq Ahmed Advocate.  
: 2. Syed Imran Ahmed s/o Syed Riaz Ahmed Sabir, in person and assisted by Mr. Khaleeq Ahmed, Advocate.

Respondent : The State  
Through Mr. Mukesh Kumar Khatri,  
Assistant Attorney General for Pakistan.

Date of Hearing : 13.05.2020  
Date of Judgment : 21.05.2020

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

**ZULFIQAR ALI SANGI, J:-** Accused Faheem Arshadullah s/o Muhammad Arshadullah and Syed Imran Ahmed s/o Syed Riaz Ahmed Sabir were tried by the learned Presiding Officer, Special Court (Offences in Banks) Sindh at Karachi, in Case No.54/2008 arising out of Crime No.75/2008, U/s. 409/477-A/34 PPC, registered at FIA CC Karachi. After trial vide judgment dated 17.05.2011 the appellants named above were convicted and sentenced as under:-

*Convicted accused Muhammad Irshadulhaq, Syed Imran Ahmed and Fahim Arshadullah for offence u/s 245(2) Cr.P.C. and sentenced them to suffer seven years (7 years) R.I. each with fine of Rs.13 millions each and in default of payment of fine they were ordered to undergo S.I. for twenty-one months each. The amount if recovered from the accused was ordered to be paid to the concerned Bank.*

*The Benefit of Section 382(b) of Cr.P.C. was also been extended to them.*

2. Being aggrieved and dissatisfied by the judgment passed by Presiding Officer, Special Court (Offences in Banks) Sindh at Karachi, the appellants preferred the aforesaid appeals whereas an appeal No. 255 of 2011 was filed by the appellant Muhammad Arshadullah which he did not press and the same was dismissed vide order dated 13-05-2020.

3. The brief facts of the case registered on 14.11.2008 on the complaint of Mr. Sajid Zafar Mansoori are that he submitted written complaint to the DD, FIA Karachi alleging therein that from the preliminary checking of records of MCB Shershah branch it was observed that there was a shortfall in cash of Rs.389006803.00. He further

informed that inquiry in this regard is being conducted and any misappropriation found further would be intimated accordingly. In the meantime, he requested for taking legal action against Syed Imran Ahmed Branch Manager, Fahim Arshadullah, operational Manager and Muhammad Irshadulhaq cash teller. The FIA on receiving a complaint from complainant Mr. Sajid Zafar Mansuri registered the case against the accused u/s 409/477-A/34 PPC. The shortfall which complainant detected was as under:-

Cash as per branch GL report	Rs.42899150.62
<u>Cash as per physical checking</u>	<u>Rs.3992347.62</u>
Shortfall in cash in hand	Rs.389006803.00

4. After completing the investigation challan was submitted by the investigation officer before the competent court of law and the formal charge against the accused persons was framed to which they pleaded not guilty and claimed trial of the case.

5. The prosecution in order to prove its case examined 05 prosecution witnesses who exhibited various documents in support of the prosecution case and thereafter the prosecution closed its side. Statements of the accused were recorded u/s 342 Cr.P.C. in which they denied the allegations against them. They did not examine themselves on oath nor call defence evidence in support of their case.

6. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the judgment dated 17.05.2011 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Mr. Khaleeq Ahmed Advocate learned counsel for the appellant Faheem Arshadullah has contended that the appellant is innocent and involved by the complainant due to professional jealousy; that no misappropriation was committed by the appellant; that from the contents of FIR and the evidence produced by the prosecution section 409 PPC is not made out; that the prosecution has failed to produce reliable and trustworthy evidence and has not proved its case beyond a reasonable doubt; that no direct evidence against the appellant is available and the sole responsibility was upon the co-appellant Imran Ahmed who was the manager of the branch at that time. Lastly, he prayed that the appellant may be acquitted by extending him the benefit of the doubt. He relied upon the cases of S.M Sardar Jafri V. The State (1986 MLD 1859), Tariq Saleem V. The State (1987 P.Cr.L.J 62), and Mitho Khan V. The State (1987 P.Cr.L.J 1869).

8. Appellant Syed Imran Ahmed contended that he was the branch manager at the time of scam and has not committed any offence; that the allegations against him are false and fabricated; that the convicted cashier namely Faheem Arshadullah was responsible for committing the offence; that his signatures were managed while

arguing the matter he requested Mr. Khaleeq Ahmed Advocate to argue on his behalf who contended that the appellant is innocent and was involved due to professional jealousy and the complainant had exonerated the real accused and falsely deposed against the appellant; that there is no direct evidence against the appellant; that no loss occurred to the bank; that signature of the appellants were not sent to a handwriting expert for matching with the genuine signatures of the appellant. Lastly, he prayed that the appellant may be acquitted by extending him the benefit of the doubt.

9. On the other hand, Mr. Mukesh Kumar Khatri, learned Assistant Attorney General for Pakistan has fully supported the impugned judgment and contended that the prosecution has proved its case beyond a reasonable doubt; that the evidence produced by the prosecution is reliable, trustworthy and confidence inspiring and the misappropriation in the bank has not been denied by the appellants but both of them have blamed upon each other. Lastly, he prayed that the appeals filed by the appellants may be dismissed.

10. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellants, the impugned judgment with their able assistance, and have considered the relevant law including that cited at the bar.

11. At the outset it is observed that the appellants have been released from jail having already served out their sentences and that they have preferred their appeals in order to remove the stigma against them on account of their convictions.

12. After our reassessment of the evidence produced by the prosecution, we have found that the prosecution has proved its case beyond a reasonable doubt against the appellants, through reliable, trustworthy, and confidence-inspiring evidence and as such the impugned judgment is upheld on account of the reasons mentioned in the following paragraphs of this judgment.

13. The most important witness of the prosecution was the complainant of the case and he deposed that on 13-11-2008 he made a complaint to the FIA against Syed Imran Hussain, Faheem, and Irshadul Haq and also produced certain documents before the investigation officer related to the scam. He deposed that Syed Imran was the then branch manager MCB Shershah, Irshadul Haq was cashier, and Faheem was operation manager in the same branch. He further deposed that on 03-11-2008 he visited the branch and found some unposted cheques were kept by accused in their drawers and those cheques were not entered in the record. On his further verification the account in respect of those cheques there was no balance to the extent of the amount mentioned in the cheques in the account of said customers. Whereas he found that entries of those

cheques were not recorded in the cash book as per procedure and he was informed by Manager Imran and Faheem that during the evening hours of the business of the bank the amount shall be deposited and cheques shall be cleared. He confirmed such fact on the next day through email by Manager Imran that cheques are cleared. He found the working in the branch was irregular therefore on the next day i.e. 04.11.2008 in order to verify the real facts he again visited the branch to verify that those three cheques were posted. He further deposed that on 08.11.2008 he went for inspection of the branch and found that accused were not working according to the system and procedure. During the verification of vouchers, he found that one cheque amounting to Rs.15,00,000/- dated 28.05.2008 issued by customer Danish was not signed by said Danish then he reported the matter to G.M that branch is not working on the proper track. He further deposed that Manager Imran informed him on 13.11.2008 on the telephone that cash of Rs.38.906 million has become short in the branch. After hearing this he along with Irfan immediately rushed to the branch and enquired from accused as to how such a huge amount has become short for which they have not replied satisfactory and on the same day accused Faheem became ill and left the branch at Noon. He also got the signature of the accused on the statement about the shortage of the cash then the matter was reported to FIA and also Audit Team has verified and conducted the inspection of record wherein it was further found that some pay orders were issued from the branch but the amount involved underpay order were not received at the time when pay orders were prepared or when or where from the concerned party had applied for issuance of pay orders but subsequently when pay orders came in the clearance in the branch the amount was realized and received from the concerned customers. He further deposed that due to the act of accused persons the bank sustained loss of Rs.38.9 million besides that the Management also received the claims of Rs.11 million from the various customers and the amount was also paid by bank thus total loss caused by the bank was about Rs.50 million and the said loss was caused by the accused persons while committing illegalities, fraud, misappropriation and embezzlement. This witness has exhibited the entire documents related to the scam and he was cross-examined at some length but we could not find any material favourable to the appellants.

14. We also found that during cross-examination of the complainant on behalf of accused Irshadul Haq some suggestions were made and the witness replied as **“It is correct that there was no complaint in writing from Manager against cashier Irshadul Haq that he is not cooperating simultaneously he also requested that till audit party is deputed he should not be transferred. Voluntarily says, this was stated by Manager on 03.11.2008 but it was in shape of formal complaint.”** Again in reply to suggestion, this witness stated in cross-examination that **“It is correct that since cashier Irshadul Haq was not cooperating that the illegalities and irregularities being committed by Manager and Operation Manager**

**therefore, report against him was given, that he is not cooperating.”** He further on the suggestion made on behalf of accused Faheem Arshadullah had stated during cross-examination that **“It is incorrect to say that in order to save beneficiaries and to hide out the actual beneficiaries the accused have been involved.”** We also found that suggestion was made on behalf of accused Syed Imran Ahmed and the witness stated that **“It is incorrect to say that we have exonerated the real culprits from the charge and false and fabricated case has been registered against the accused.”** From the suggestions made on behalf of the appellants, it is very much clear that the shortage of the amount and the illegalities so also the irregularities and the loss occurred to the bank has been admitted by the appellants but they are leveling the allegations upon each other. His evidence regarding the handing over the documents related to the scam was supported by the evidence of PW-2 as in his presence complainant handed over the material to the investigation officer and investigation officer prepared the mashirnama. The appellants did not cross-examine him on this point as such his evidence has gone unchallenged and is completely reliable.

15. PW-3 was examined by the prosecution who after the appellant had taken charge of the MCB Shershah branch and deposed that after the assuming charge various customers came to the bank, and filed their claims and he paid 31 claims amounting to Rs.1,21,18,428/=. He deposed that those claims were settled by him with the permission of head office and paid to customers as they have the acknowledgment of deposits and the said amount was not crepitated in their accounts. He deposed that he came to know from the bank staff that cashier used to receive the amount/ deposits from the customers and he was also the custodian of the stamp and the acknowledgment receipts also bear his signatures which (Signatures) he also verified from the record/acknowledgment vouchers. He further deposed that besides the claims regarding deposits of cash there were also other claims which were relating to shortage of amount and misuse of customer’s cheque. This witness has seen the documents produced by the complainant and stated that the Exh. 7/C-1 to 7/C-15, 7/D-1 to 7/D-10, and 11/D-11 and stated that these are relating to the scam and further deposed that Exh. 7/D-11 bears the signature of the cashier and chief manager who is the accused. This witness was also cross-examined but we do not find any material favourable to the appellants.

16. PW-4 Muhammad Junaid was examined who deposed that he knows the accused persons as they were posted at the Shershah branch and he is aware of the signatures of the accused and he by seeing the documents produced by the complainant deposed that signatures available on the documents are of the accused persons. He was cross-examined but no material favourable to the appellants was brought on record nor did the appellants challenge that he is not aware of their signatures.

17. The investigation officer was examined and deposed that he received the complaint through DD FIA, Karachi about the misappropriation in the MCB Shershah branch lodged by the Sajid Zafar Mansoori, and he registered the said FIR bearing crime No. 75 of 2008 and arrested the accused Syed Imran Ahmed and Irshadul Haq and prepared such memo. He deposed that during the investigation he seized the relevant bank record under proper seizure memos and also recorded the statements under section 161 Cr.P.C of the witnesses and submitted the challan, he was cross-examined on behalf of the appellants but no evidence favourable to the appellants resulted from this cross examination. We found some suggestions were made to this witness during cross-examination which are sufficient to hold that the misappropriation was committed in the bank and since only the appellants were posted at the relevant time in the relevant position are responsible for the same when all the other ocular and documentary evidence are considered. The witness replied on the suggestion made by the defence counsel that **"It is not in my knowledge that high ups of the bank were also involved in the shortfall of the amount pertaining to one and half year."** Again during cross-examination on the suggestion made on behalf of the appellant Syed Imran Ahmed the investigation officer replied that **"It is incorrect to say that at the instance of bank management I have involved the accused in this case though he was witness against the other accused."** The I.O. had no enmity with the appellants and had no reason to falsely implicate them in this case or let off anyone else and as such we have no reason to disbelieve his evidence.

18. We have carefully examined the statements under section 342 Cr.P.C of the appellants and also found admissions of misappropriation in the bank at the relevant time when they were posted. The appellant Syed Imran Ahmed gave the answers of Q. No 1 and 2 as under:-

Q. No.1:- You have heard the prosecution story and it has come in the evidence of PW Sajid Zafar Mansoori that you accused Syed Imran Ahmed was posted as Manager in MCB Shershah, on 13.11.08, and he filed complaint Exh. 7/A against you, and others in FIA, what you have to say?

Ans:- **Yes it is correct.**

Q. No. 2:- Pw Sajid Zafar Mansoori has further deposed that on 3.11.08 during his surprise visit he found that three cheques were not entered in the record/cash book, and were lying in drawer and no balance was available in their respective accounts, and you accused Syed Imran Ahmed and Faheem informed that in evening time amount will be deposited and cheques shall be cleared and same was confirmed by co accused Imran through E-mail on next date, what you have to say?

Ans. **It is correct.**

19. Thus on our reassessment of the evidence produced by the prosecution, we find that the prosecution has proved its case against the appellants beyond a reasonable doubt by producing reliable, trustworthy, and confidence-inspiring ocular and documentary evidence. It is settled principle of law that the assertions/allegations

made by the prosecution against the accused if admitted during the statement under section 342 Cr.P.C. the same can be used against the accused while awarding the conviction.

20. In view of the facts and circumstances narrated above and the reasons assigned, we do not find any scope for interference in the impugned judgment of the learned trial court hence, the instant appeals before us are dismissed. The convictions and sentences awarded upon by the learned trial Court are upheld.

21. The appeals are disposed of in the above terms.

JUDGE

JUDGE