

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 6834 of 2017

Md. Rafique Ahmed

...Convict-appellant

-Versus-

The State and another

...Respondents

Mr. Abdus Salam Mamun, Senior Advocate with

Mr. Mohammad Abdul Mannan, Advocate with

Mr. Ahsanul Hoque (Liton), Advocate

...For the convict-appellant

Ms. Sharmin Hamid, A.A.G with

Mr. Sultan Mahmood Banna, A.A.G

...For the State

Ms. Quamrun Nessa (Ratna), Senior Advocate

...For the respondent No. 2,

Anti-Corruption Commission

Heard on 10.11.2024, 11.11.2024, 02.12.2024,  
03.12.2024, 15.12.2024 and 05.01.2025**Judgment delivered on 06.01.2025**

This criminal appeal under Section 10 of the Criminal Law Amendment Act, 1958 is directed against the impugned judgment and order dated 04.06.2017 passed by Divisional Special Judge, Chattogram in Special Case No. 22 of 2012 arising out of Kotwali Police Station Case No. 40 dated 25.07.2004 corresponding DAB GR No. 26 of 2004 convicting the appellant under Section 409 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947 and sentencing him under Section 409 of the Penal Code, 1860 to suffer rigorous imprisonment for 03(three) years and fine of Tk. 10,000, in default, to suffer rigorous imprisonment for 03(three) months and confiscating the misappropriated amount Tk. 1,13,644 in favour of the State.

The prosecution case, in short, is that the accused Md. Rafique Ahmed, former Deputy Manager of Sales, Jibon Bima Corporation, Sales Office, Chattogram received the premium of Tk. 1,13,644.40

from the policyholders from 30.04.1998 to 31.12.1998. He received Tk. 7010 by money receipt No. 160646 dated 30.04.1998 against the Insurance Policy No. 1048544-9, Tk. 9,419.10 by money receipt No. 204536 dated 15.11.1998 against Insurance Policy No. 3104763-2, Tk. 3,948.30 by money receipt No. 209754 dated 07.12.1998 against the Insurance Policy No. 3100427-8 from policyholder A.K.M Sarwar. He received Tk. 3560 by money receipt No. 160644 dated 30.04.1998 against the Insurance Policy No. 1084340-7 from Md. Shahadat Hossain, Tk. 10,425 by money receipt No. 209792 dated 30.11.1998 against the Insurance Policy No. 0181610-7 from policyholder Alhaj Sirazul Haque, Tk. 13,140 by money receipt No. 209748 dated 07.12.1998 against the Insurance Policy No. 1046274-5 from Policyholder Sayedul Haque, Tk. 21,372 by money receipt No. 214762 dated 30.12.1998 against Insurance Policy No. 3105148-5 from Dr. S.A.M Osman, Tk. 3,460 by money receipt No. 238871 dated 31.12.1998 against the Insurance Policy No. 1083260-8 from policyholder A.K.M. Shahjahan, Tk. 17,760 by money receipt No. 238868 dated 31.12.1998 against the Insurance Policy No. 0186185-5 from policyholder Md. Zaker Hossain and Tk. 23,550 by money receipt No. 256312 dated 31.12.1998 against Insurance Policy No. 3112012-4 from policyholder Arfan Uddin Ahmed. After recovery of total Tk. 1,13,644.40 from the said policyholders as premium the accused did not deposit the said amount against the said insurance policies of the said policyholders and misappropriated the said amount.

P.W. 3 Md. Anisur Rahman took up the investigation of the case. During the investigation, he visited the place of occurrence, seized documents, and recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898 and during his investigation, the then Bureau of Anti-Corruption was abolished. After the constitution of the Anti-Corruption Commission, P.W. 13 Shamsuddin Ahammed was appointed as Investigating Officer vide

memo dated 02.07.2009. After completing the investigation, he submitted the memo of evidence and thereafter, he transferred the case records to the Deputy Director, ACC, Combined District Office, Chattogram-1. The Anti-Corruption Commission, Head Office, Dhaka by memo dated 14.06.2010 gave approval to submit the charge sheet against the accused. Thereafter, the Investigating Officer M.M. Sabbir Hasan, Deputy Director, ACC, Combined District Office, Chattogram-1 submitted charge sheet against the accused under Section 409 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947.

Thereafter, the case record was sent to the Senior Special Judge, Chattogram who took cognizance of the offence against the accused under Section 409 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947 and sent the case to the Divisional Special Judge, Chattogram for trial and disposal of the case. During the trial, the charge was framed against the accused under Section 409 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947 which was read over and explained to him and he pleaded not guilty to the charge. During the trial, the prosecution examined 13(thirteen) witnesses to prove the charge against the accused and the defence cross-examined the prosecution witnesses. Thereafter, the accused was examined under Section 342 of the Code of Criminal Procedure, 1898 and he declined to adduce any D.W. After concluding the trial, the trial Court by impugned judgment and order was pleased to convict the accused and sentenced him as stated above against which he filed the instant appeal.

P.W. 1 Md. Ali Hossain was the Deputy Manager of Jibon Bima Corporation, Motijheel, Dhaka. He stated that in 1999 he joined as Assistant Manager of Jibon Bima Corporation. The occurrence took place from 1993 to 2003. The accused Md. Rafique Ahmed was the Deputy Manager (Sales) of Jibon Bima Corporation. From 30.04.1998

to 31.12.1998 he received total Tk. 1,13,644.40 as premium against the insurance policy from the policyholders Sarwar, Shahadat Hossain, Sirazul Haque, Sayedul Haque, Osman, Shahid, Shahjahan, Zaker Hossain and Arman Uddin. He receive the said premiums against the insurance policy of the said policyholders and misappropriated total Tk. 1,13,644.40. A departmental case was initiated against the accused and he conducted the departmental proceeding. In the departmental proceeding, the accused was found guilty and he was dismissed from service. During cross-examination, he stated that the departmental case was initiated in 2003. Abdus Salam was the Enquiry Officer of the departmental proceeding. He could not say whether the policyholder Sayedul Hque was examined in the departmental case. He affirmed that the policyholders were examined in the departmental proceeding. He admitted that the accused was not present in the departmental proceeding. The policyholder Sarwar was the complainant of the departmental proceeding. In the departmental proceeding, one doctor S.M. Osman, Shahid, Azizur Rahman and Mrs. Rehana were examined. The Divisional Commissioner recorded the evidence of witnesses in one day. On 14.07.2003 the report was submitted against the accused. He denied the suggestion that the accused did not get the opportunity to defend him in the departmental proceeding. He denied the suggestion that he deposed falsely.

P.W. 2 Md. Manjurul Islam was the Assistant Manager, Jibon Bima Corporation, Head Office, Dhaka. He stated that on 20.04.2004 he discharged his duty as Assistant Manager, Head Office, Administrative Branch, Jibon Bima Corporation, Dhaka. The record of the departmental proceeding (total 27 pages) and the said documents were seized and handed over to his custody. On recall, he produced the photocopy of the said seized documents. The original documents are lying with the records of Special Case No. 12 of 2012. The photocopies of the submitted documents are identical to the original documents

lying with the Special Case No. 12 of 2012. He proved the jimmanama as exhibit 1 and his signature as exhibit 1/1. He proved the photocopy of the document as exhibit 2. He denied the suggestion that the accused discharged his duty with a good reputation. He affirmed that he came to know about the irregularity committed by the accused in 1999 or 2000. He denied the suggestion that he deposed falsely.

P.W. 3 Md. Anisur Rahman was the Assistant Director, ACC, Combined District Office, Jashore. He stated that from 16.01.2004 to 2006, he discharged his duty as Inspector of the ACC, Head Office, Dhaka. On 12.02.2004 he was appointed as Enquiry Officer. During enquiry on 20.04.2004 at 12.30 noon, he seized documents from Manjurul Islam, Assistant Manager, Jibon Bima Corporation. He proved the seizure list as exhibit 3 and his signature as exhibit 3/1. He handed over the documents to the custody of Manjurul Islam. After enquiry, he found that the accused Md. Rafique Ahmed misappropriated total Tk. 7,08,238.50 and he submitted the year-wise report against him. From 18.01.1999 to 05.02.2000 the accused Md. Rafique Ahmed realized Tk. 1,13,644.40 as premium from the policyholders and without depositing the said amount misappropriated for which he lodged the FIR. He proved the FIR as exhibit 4 and his signature as exhibit 4/1. He partly investigated the case. During the investigation on 04.10.2004, he seized fifteen items of documents. He proved the seizure list as exhibit 5 and his signature as exhibit 5/1. He handed over the documents to the custody. On 06.10.2004 at noon, he seized documents from Ahamad Sagir. He proved the seizure list as exhibit 6 and his signature on the seizure list as exhibit 6/1. On 07.10.2004 he seized documents from Ahmad Sagir. He proved the seizure list as exhibit 7 and his signature on the seizure list as exhibit 7/1. He handed over the documents mentioned in the seizure list (exhibits 6 and 7) to the custody. On 07.10.2004 he seized two items of documents from Ahmad Sagir. He proved the seizure list as exhibit 8

and his signature on the seizure list as exhibit 8/1. Subsequently, he handed over the seized documents to the Investigating Officer. After reconstitution of the ACC, he handed over the documents to the new Investigating Officer. During cross-examination, he stated that during the enquiry, he did not visit the Office of the Jibon Bima Corporation, Chattogram. On 20.04.2004 he seized documents of the departmental proceeding. He did not seize the annual audit report of the Jibon Bima Corporation. He received the information from the head office that the accused misappropriated total Tk. 7,08,238.50. The accused Rafique Ahmed was not present in the departmental proceeding. During the enquiry, he did not record the statement of the policyholders. He denied the suggestion that he submitted the report following the departmental proceeding. He affirmed that he could not record the statement of the policyholders. On recall, he stated that on 08.10.2004 he seized some documents. He proved the documents as exhibit 9/2. He submitted the documents seized on 08.10.2004 as exhibits 10 to 17. He did not record the statement of witnesses mentioned in the seizure list dated 08.10.2004. He could not say whether the Zia Brothers filed any complaint. He denied the suggestion that he did not investigate the case properly or he deposed falsely.

P.W. 4 Mohammad Shah Alam was the Junior Officer, Jibon Bima Corporation, Head Office, Dhaka. He stated that on 20.04.2004 he discharged his duty as Upper Division Assistant of Jibon Bima Corporation. On that day, Inspector Aminur Rahman of the Bureau of Anti-Corruption seized the record of the departmental proceedings initiated against the accused Rafique Ahmed. He signed the seizure list. He proved his signature on the seizure list as exhibit 3/2. He could not remember whether at the time of seizure, any officer was present or not. He denied the suggestion that he along with Manjurul Islam went to the Office of the ACC and the documents. He denied the suggestion that he deposed falsely.

P.W. 5 Md. Abul Kalam Sarker was the DGM (Retired), Jibon Bima Corporation, Dhaka. He stated that at the time of occurrence, he discharged his duty in the Head Office. A departmental proceeding was initiated against the accused Rafique Ahmed for misappropriation of the premium of the policyholders. He was the enquiry officer of the departmental case. During the enquiry, he found the truth of the allegation of misappropriation of the premium received from the policyholders against the accused. On 14.07.2003 he submitted the report. He affirmed that there was a Trade Union with the Jibon Bima Corporation and he was the President of the Trade Union. At the time of enquiry, the complainants were present. He sent notice to the accused to appear in the departmental proceeding. There was no postal receipt along with the enquiry report. During the enquiry, he did not seize the audit report. He affirmed that few Officers of the Trade Union having published the PR book used to receive the premium from the policyholders for which they were punished. He denied the suggestion that he had intimate relations with the Officers of the Trade Union. He admitted that the name of the accused was included in the fit list of 2001 for promotion.

P.W. 6 Ahammad Sagir stated that on 04.10.2004 he was the Manager of the Area Office, Jibon Bima Corporation, Chattogram. On that day, Inspector Aminur Rahman seized documents from his office. He handed over the documents to the custody of Safiqur Rahman. He proved his signature on the seizure list as exhibit 5/2. He affirmed that the P.R. receipt, hand receipt and different documents were seized.

P.W. 7 Mizanur Rahman was the Deputy Manager, Jibon Bima Corporation, Agrabad, Chattogram. He stated that on 04.10.2004 he discharged his duty as Assistant Manager, Regional Office. On that day, Inspector Anisur Rahman seized documents from his office and took his signature on the seizure list. He proved the seizure list as

exhibit 5/3. He affirmed that P.R. receipt, insurance record and bank deposits were seized.

P.W. 8 Md. Golam Mostofa was a Constable. He stated that on 09.02.2010 Sub-Assistant Director Samshuddin Ahammad of ACC seized one money receipt and he was present at the time of seizure. He proved the seizure list as exhibit 18 and his signature on the seizure list as exhibit 18/1. During cross-examination, he stated that he is not aware of the occurrence. He affirmed that he is only concerned with the seized document.

P.W. 9 Md. Zahurul Islam stated that on 25.01.2010 he discharged his duty with the ACC, Chattogram. On that day, Salahuddin Ahmad, Sub-Assistant Director of the ACC seized documents in his presence. He signed the seizure list. He proved the seizure list as exhibit 18 and his signature on the seizure list as exhibit 18/2. He affirmed that after writing the seizure list he signed. The Deputy Director Samshuddin Ahammad wrote the seizure list. 3(Three) items of documents were seized. He denied the suggestion that he was not aware of the occurrence or at the order of the higher authority he deposed in the case.

P.W. 10 Md. Shafiqur Rahman Khan was the Assistant Manager (In-Charge), of Jibon Bima Corporation. He stated that on 04.10.2004 at 11.30 am based on the seizure list, documents were seized. Subsequently, the documents were given to his custody. He proved the documents as exhibits 19 to 33. He produced the documents seized on 06.10.2004 at noon. He proved two sets of documents as exhibits 34 and 35. Ahmmad Sagir took custody of the documents seized on 07.10.2004 at 09.30. He proved the documents as exhibits 36 to 39. During cross-examination, he stated that he heard that the recovered premium was misappropriated. He denied the suggestion that he was not aware of the occurrence.



P.W. 11 Md. Rashedul Bari was an employee of Zia and Brothers. He stated that he was a policyholder of the Jibon Bima Corporation. After payment of the premium for 5 years, he withdrew the money. None misappropriated his premium. The defence declined to cross-examine P.W. 11.

P.W. 12 Dr. S.A. MD Osman Shahid Kutubi is a policyholder. He stated that he opened the policy No. 3105148-5. He paid the premium in time. In 2002 while he went to deposit the premium came to know that the premium paid earlier by him was misappropriated. He went to the office of insurance along with the money receipts and filed an application to the Deputy General Manager. During enquiry, it was found that the accused Rafique Ahmed misappropriated total premium of Tk. 21,372. During cross-examination, he affirmed that the accused Iqbal and Rafique came to him to open a policy. He opened a policy in 1994 for 18 years. He paid Tk. 21,372 as premium. Iqbal received the premium for 1995 and 1996. Rafique Ahmed received the premium from 1997 to 1999. The accused received the premium from him but he did not deposit the premium. In 2001 he deposited the premium in the Head Office. At that time, the accused was transferred to Rajshahi. The accused also signed the money receipt for the premium received by Iqbal. No notice was issued from the office regarding the non-payment of the premium till 2002. The policy expired in 2010. Thereafter, the benefit of his policy was not paid to him. The Officer of the ACC recorded his statement in 2010. He filed the complaint in 2002 with the Jibon Bima Corporation. In 1998 he paid the premium of 1997 along with the late fee. He affirmed that he did not pay the premium of 1997 in time. He also affirmed that Mr. Iqbal received the premium and used it to issue money receipts after 4/5 days. He affirmed that the accused Rafique received the premium of 1997 along with the late fee. He did not file any application for late payment of the premium. The signature on the deposit slip of 1997 and the money receipt from 1998 are

identical to the signature of the accused. He denied the suggestion that he did not pay the premium to the accused or he used to pay the instalment to Mr. Iqbal or he did not pay the premium of 1998. He denied the suggestion that after 12 years he falsely deposed to get the benefit of the premium or he deposed falsely.

P.W. 13 Samsuddin Ahammed, Inspector, CID, Chattogram was the Investigating Officer. He stated that on 15.11.2009 he discharged his duty as Sub-Assistant Director of ACC, Combined District Office, Chattogram-1. He was appointed as Investigating Officer vide memo dated 02.07.2009. He proved the memo dated 02.07.2009 and 14.07.2009 as exhibits 40 and 41. During the investigation, he found that the accused received total Tk. 1,13,644.40 as a premium from the eight policyholders. A departmental proceeding was initiated against the accused. DAB Inspector Aminur Rahman enquired against the accused and he lodged the FIR. He was also appointed as Investigating Officer on 08.10.2004. Subsequently, the Bureau of Anti-Corruption was abolished and he was appointed as Investigating Officer. During the investigation, he recorded the statements of policyholders. He seized documents on 09.02.2010. He proved the seizure list dated 09.02.2010 as exhibit 18 and his signature on the seizure list as exhibit 18/3. He proved the seized money receipt as exhibit 42. During the investigation, he found the truth of the allegation against the accused and submitted memo of evidence. Thereafter, he was transferred on 31.12.2010. During cross-examination, he stated that he was the Second Investigating Officer. He recorded the statement of two policyholders out of eight. He sent notice to the policyholders and the informant. He also sent notice to the accused. He denied the suggestion that the accused Rafique Ahmed did not give any statement to him. He affirmed that the insurance receipt of Dr. Osman Shahid Kutubi was seized from his office. He did not peruse the audit report of 2003. He perused the records of departmental

proceedings. The accused discharged his duty as Deputy Manager (Sales) from 30.04.1998 to 31.12.1998. He did not record the statement of the field workers who discharged their duty at that time. He denied the suggestion that without perusal of the relevant documents he submitted the false report.

Learned Senior Advocate Mr. Abdus Salam Mamun appearing along with learned Advocate Mr. Mohammad Abdul Mannan and learned Advocate Mr. Ahsanul Hoque (Liton) on behalf of the appellant submits that the accused Md. Rafique Ahmed was the Deputy Manager (Sales) and he did not receive any premium from any policyholder. During the investigation, the signatures on the money receipts (exhibits 20, 26, 27, 28, 31, 34 and 38) were not sent to the handwriting expert to prove that the accused Md. Rafique Ahmed issued the money receipts and received the alleged premium from the policyholders. He further submits that although the prosecution examined policyholder P.W. 12 Dr. S.A. MD Osman Shahid Kutubi but he did not say anything in the examination-in-chief as regards payment of premium to the accused Md. Rafique Ahmed. Having drawn the attention of this Court to the evidence of P.W. 12, he candidly submits that Mr. Iqbal used to receive the premium and the alleged signature of the accused Md. Rafique Ahmed on the money receipt (exhibit 34) was not proved by P.W. 12. The prosecution failed to prove the charge against the accused by adducing documentary evidence and the trial Court failed to assess the evidence of the prosecution witnesses following the correct principle of assessment of the evidence and arrived at a wrong decision as to the guilt of the accused. He prayed for setting aside the impugned judgment and order passed by the trial Court.

Learned Senior Advocate Ms. Quamrun Nessa (Ratna) appearing on behalf of respondent No. 2, Anti-Corruption Commission, submits that the accused received total premium amounting to Tk.

1,13,644.40 from the eight policyholders by issuing money receipts which were proved as exhibits 20, 26, 27, 28, 31, 34 and 38. She further submits that by cross-examining P.W. 12, the defence affirmed that the accused received the premium from P.W. 12 Dr. S.A. MD Osman Shahid Kutubi. During the trial, the prosecution proved the charge against the accused to the hilt beyond all reasonable doubt. She prayed for the dismissal of the appeal.

I have considered the submissions of the learned Senior Advocate Mr. Abdus Salam Mamun who appeared on behalf of the appellant and the learned Senior Advocate Ms. Quamrun Nessa (Ratna) who appeared on behalf of respondent No. 2, Anti-Corruption Commission, perused the evidence, impugned judgment and order passed by the trial Court and the records.

On perusal of the evidence, it appears that at the time of occurrence allegedly took place from 30.04.1998 to 31.12.1998, the accused Md. Rafique Ahmed discharged his duty as Deputy Manager (Sales), Jibon Bima Corporation, Area Office, Chattogram. It has been alleged that at the time of occurrence, the accused received total Tk. 1,13,644.40 from the eight policyholders. The prosecution only examined policyholder Dr. S.A. MD Osman Shahid Kutubi as P.W. 12. It has been alleged that the accused Md. Rafique Ahmed received Tk. 21,372 as a premium from the P.W. 12 Dr S.A. MD Osman Shahid Kutubi and issued the money receipt (exhibit 34). Another money receipt issued in favour of policyholder A.K.M Sarwar was proved as exhibits 26 and 27. The money receipt allegedly issued in favour of the policyholder Osman was proved as exhibits 24 and 31. The money receipt issued in favour of policyholder Sirazul Haque was proved as Exhibit 38. The money receipt issued in favour of policyholder A.K.M. Shahjahan was proved as exhibits 20 and 28. No other money receipt was proved by the prosecution.

On perusal of exhibits 20, 24, 26, 27, 28, 31, 34 and 38, it reveals that there is a seal of the Jibon Bima Corporation on those exhibits and one Officer of the Jibon Bima Corporation put initial on those exhibits. There is no seal of any particular officer on those exhibits. During examination-in-chief, P.W. 12 did not say anything as regards the issuance of the money receipts (exhibit 34) by accused Md. Rafique Ahmed. During cross-examination, he stated that he paid the premium of 1998 to the accused and he also affirmed that Mr. Iqbal used to receive the premium and after 3/4 days issued the money receipts.

P.W. 12 stated that the accused Md. Rafique Ahmed received the premium from him and Md. Iqbal, an Officer of the Jibon Bima Corporation, also used to receive the premium from him and after 3/4 days, he issued the money receipts. Therefore, the evidence of P.W. 12 as to the receipt of premium by the accused Md. Rafique Ahmed is contradictory. The alleged signature of the accused Md. Rafique Ahmed on exhibit 34 was not proved by P.W. 12. The alleged signatures on exhibits 20, 24, 26, 27, 28, 31, 34 and 38 were not sent to the handwriting expert to ascertain that the accused Md. Rafique Ahmed issued those money receipts. In the absence of any documentary evidence regarding premium allegedly received from the policyholders by the accused, it cannot be held that the accused Md. Rafique Ahmed received the premium from the policyholders.

The above view of this Court lends from an unreported decision made in the case of Md. Abdus Sobhan -Vs- The State and another, Criminal Appeal No. 741 of 1987 (Re-Criminal Appeal No. 186 of 1988) judgment dated 27.01.2022 (Md. Shohrowardi, J) wherein it has been held that

“In the absence of any document regarding the realization of leased money amounting to Tk. 33,000, the tax amounting to Tk. 1,500 and project money amounting to Tk. 7000, the prosecution has failed to

prove the charge against the appellant beyond a reasonable doubt. Therefore, the appellant is honourably entitled to get acquittal from the charge levelled against him.”

It is found that at the relevant time, the Officers of the Trade Union of Jibon Bima Corporation, Chattogram having published the PR book used to receive the premium from the policyholders. Therefore, the false implication of the accused Md. Rafique Ahmed in the case cannot be ruled out. In a similar situation, in the Criminal Appeal Nos. 6829 of 2017, 6830 of 2017, 6833 of 2017, 6831 of 2017, 6832 of 2017 and 6835 of 2017 this Court set aside the judgment and order of conviction and sentence passed by the trial Court against the accused Md. Rafique Ahmed. I do not find any reason to differ the judgment passed in the above-mentioned appeals.

Because of the above evidence, findings, observation and proposition, I am of the view that the prosecution failed to prove the charge against the accused beyond all reasonable doubt.

I find merit in the appeal.

In the result, the appeal is allowed.

The impugned judgment and order of conviction and sentence passed by the trial Court against the accused Md. Rafique Ahmed is hereby set aside.

However, there will be no order as to costs.

Send down the lower Court's records at once.