

Present
Mr. Justice Sheikh Abdul Awal
Criminal Revision No. 1369 of 2006

Md. Nizam Uddin @ Razzaque

.....Convict-Petitioner.

-Versus-

The State.

.....Opposite party.

No one appears

.....For the convict Petitioner.

Ms. Shahida Khatoon, D.A.G with

Ms. Sabina Perven, A.A.G with

Ms. Kohenoor Akter, A.A.G.

..... For the Opposite party.

Judgment on 03.03.2024.

Sheikh Abdul Awal, J:

This Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 02.11.2006 passed by the learned Additional Sessions Judge, Sherpur in Criminal Appeal No. 22 of 2006 affirming the judgment and order of conviction and sentence dated 15.03.2005 passed by the learned Additional District Magistrate, Sherpur in D.M. Case No. 17 of 2003 arising out of G.R. No. 531 of 96 corresponding to Sherpur Police Station case No.09 dated 17.12.96 convicting the accused petitioner and

another under section 380 of the Penal Code and sentencing them thereunder to suffer rigorous imprisonment for a period of 4(four) years each should not be set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The prosecution case, in brief, is that one Md. Hedayet Ullah as informant on 17.12.1996 at 15.15 hours lodged an Ejahar with Sherpur police station against the convict-petitioner stating inter-alia, that on 16.12.1996 while he was sleeping in his house keeping Tk. 13,050/- under his pillow and then at late hours of night on hearing sound he awoke up and caught hold of one, Md. Intaz Ali inside the room, who entered into the room by cutting fence of the room and on a query, accused Md. Intaz Ali disclosed that he in collusion with Md. Nizam Uddin @ Razzaque (convict-petitioner) and another, Intaz Ali entered into the room of the informant for stealing.

Upon the aforesaid First Information Report, Sherpur Police Station case No.09 dated 17.12.96 under sections 457/380 of the Penal Code was started against the accused petitioner and 2 others.

Police after completion of investigation submitted charge sheet against accused-petitioner and 2 others,

vide charge sheet No. 12 dated 05.02.1997 under sections 457/380 of the Penal Code.

Ultimately, the accused-petitioner and 2 others were put on trial before the learned Additional District Magistrate, Sherpur to answer a charge under sections 467/380 of the Penal code. The trial was held in absentia of the accused petitioner, Md. Nizam Uddin @ Razzaque as he was absconding.

At the trial, the prosecution side examined in all 08 (eight) witnesses and exhibited some documents to prove its case while the defence examined none.

On conclusion of trial, the learned Additional District Magistrate, Sherpur by his judgment and order dated 15.03.2005 found the accused-petitioner and another guilty under section 380 of the Penal code and sentenced them thereunder to suffer rigorous imprisonment for a period of 4(four) years each while acquitting another accused, Intaz Ali.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 15.03.2005 the convict-petitioner preferred Criminal Appeal No. 22 of 2006 before the learned Sessions Judge, Sherpur, which was subsequently transmitted to the Court of the learned Additional Sessions Judge,

Sherpur for disposal, who by the impugned judgment and order dated 02.11.2006 dismissed the appeal and affirmed the judgment and order of conviction and sentence dated 15.03.2005 passed by the trial Magistrate.

Aggrieved convict petitioner then preferred this criminal Revision and obtained the present rule.

No one found present to press the Revision on repeated calls inspite of fact that this old criminal Revision has been appearing in the list for hearing with the name of the learned Advocate for the convict petitioner for a number of days.

In view of the fact that this old criminal Revision arising out of 4(four) years sentence, I am inclined to dispose of it on merit.

On scrutiny of the record, it appears that one Md. Hedayet Ullah as informant on 17.12.1996 at 15.15 hours lodged an Ejahar with Sherpur Police Station against the convict-petitioner and others stating inter-alia, that at night on 16.12.1996 while the informant was sleeping in his house at late hours of night on hearing sound he awoke up and caught hold of one Md. Intaz Ali inside the room, who entered into the room by cutting fence of the room and on a query Intaz Ali disclosed

that with the active help of accused Md. Nizam Uddin @Razzaque (convict-petitioner) and another Intaz Ali he entered into the room of the informant for stealing. It further appears that at the time of trial the prosecution examined in all 8 witnesses to prove its case out of which PW-1, Md. Hedayet Ullah, informant of the case stated in his deposition that on 16.12.1996 at night 12 PM occurrence took place. The informant had a shop in the village and after completion of his business in shop he came to house and slept keeping his money under his pillow and at late night he got some sound inside the room and thereafter, he focused his torch light and saw accused Intaz entered inside the room. This witness also stated that on a query, the accused disclosed his name is Md. Intaz, son of Gias Uddin who caught red-handed. This witness identified the accused on doc. This witness also stated that another accused named, Nizam Uddin was outside of the house who managed to escape after commission of theft and took away Tk. 13,050/-, rice and cloths. This witness proved the FIR as exhibit-1 and his signature thereon as exhibit-1/1. This witness in his cross-examination stated that “ডকে উপস্থিত আসামী আমার বাড়ীর কাছে। সে ভাল মানুষ। ডকে উপস্থিত আসামী ইত্তাজ সাত পাকিয়ায় বিয়ে করেছে। ধৃত ইত্তাজের বাড়ী সাত পাকিয়া গ্রামে। তখন ধৃত ইত্তাজ পূর্ব শত্রুতা বশত; ডকে দাড়ালে ইত্তাজকে মামলায় জড়ায়। ডকে

দাড়ানো ইন্তাজ ভাল মানুষ।” PW-2, PW-3, PW-4, PW-5, PW-6 and PW-7 all of them in their respective deposition corroborated the evidence of PW-1 in respect of all material particulars. PW-8, Md. Ramjan Ali stated in his deposition that on 21.12.1996 he was on duty as Magistrate, 1st Class in Sherpur Magistrate Court and he written the statement under section 164 of the code of criminal procedure of the accused Md. Intaz, son of Gias Uddin. This witness identified 164 cr.p.c. statement of the accused Md. Intaz as exhibit-2 and his signature thereon as exhibit-2/1. Moreover, I.O. deposed that on completion of the investigation he found a prima facie case and accordingly submitted charge sheet against the accused petitioner and others and he produced the relevant documents as per requirement of law, which were marked as exhibits.

From the above, it appears that PWs proved the prosecution case as to the time, place and manner of occurrence and thus, the prosecution proved the guilt of the accused petitioner beyond reasonable doubts.

On an analysis of the judgments of 2 courts below together with other materials on record, it appears to me that both the Courts below on due consideration of the entire evidence and materials on record found the accused petitioner and another guilty under Section 380

of the Penal Code and sentenced them thereunder to suffer rigorous imprisonment for a period of 4(four) years each.

However, considering the law, facts and circumstances as discussed above, particularly the fact that the convict petitioner has already been suffered his sentence to some extent and faced the agony of the protracted prosecution and also suffered mental harassment for a long period, I think that, the ends of justice, will be met in the facts and circumstances of the case, if the sentence is reduced to the period already undergone.

Learned Deputy Attorney General has, of course, been able to defend this case on merits but practically has nothing to say insofar as reduction of sentence imposed upon the appellant is concerned.

The Rule is, consequently, disposed of to the extent that the sentence of imprisonment for the offence is reduced to the period already undergone. The bail bonds of the convict petitioner Md. Nizam Uddin @ Razzaque, who was ordered to be released on bail, shall stand discharged.

Send down the lower Court records at once.