

Present:

Mr. Justice Mohammad Marzi-ul-Huq

and

Mr. Justice Md. Ruhul Quddus

Criminal Misc. Case No.4846 of 2005

Parvaj

... Petitioner

-Versus-

The State

... Opposite Party

No one appears for the petitioner

Mr. Khizir Hayat, D.A.G. with Mr. Yousuf Mahmud Morshed, A.A.G.

... for the opposite party

Judgment on 3.5.2012

Md. Ruhul Quddus, J:

This Rule at the instance of the convict-petitioner was issued on an application under section 561 A of the Code of Criminal Procedure for quashment of the judgment and order dated 30.11.2002 passed by the Metropolitan Special Tribunal No.11, Dhaka in Metropolitan Special Tribunal Case No.6018 of 1999 convicting the petitioner and another under section 3 of the Explosive Substance Act and sentencing each of them thereunder to suffer rigorous imprisonment for five years.

Informant Ashutosh Shome (P.W.1) lodged an *ejahar* with Sutrapur Police Station, Dhaka on 14.9.1998 against the petitioner and three others alleging, *inter alia*, that in the previous night at about 9.00 p.m. an altercation took place at house No.13, Jadunath Basak Lane between his brother Dilip Kumar Majumder and the accused persons. After ten/fifteen

minutes of the altercation, they came back, got on the roof of adjacent house No.14 and exploded two cocktails consecutively on the glass-window at the northern side of his house [situated at 9/10, Jadunath Basak Lane (3rd floor)]. It created havoc in the area and caused damage to the windows. After the explosions, local people rushed to the house of occurrence and the accused persons fled away.

The *ejahar* gave rise to Sutrapur Police Station Case No.80 dated 14.9.1998. The police investigated the case and submitted charge sheet on 30.12.1998 against the petitioner and another under section 3 of the Explosive Substance Act, while gave final report in favour of two others.

The case was ultimately sent to the Metropolitan Special Tribunal No.11, Dhaka for hearing and disposal. Learned Judge of the Tribunal framed charge under section 3 of the Explosive Substance Act against the petitioner and another and proceeded with the trial. Since both the accused were absconding the charge could not be read over to them.

Prosecution examined six witnesses in order to prove its case. Of them, the informant Ashutoshe Shome (P.W.1) stated that after ten/fifteen minutes of the altercation, the accused Parvaj, Ahamed Ali, Khokon and another came back. They got on the roof of adjacent house No.14 and threw two hand bombs towards the windows of his house at 9/10, Jadunath Basak Lane (3rd floor). The said bombs exploded breaking glasses of the windows. He proved the *ejahar* and his signature thereon.

P.W.2 Dilip Kumar Majumder stated that on 13.9.1998 at about 9.00 p.m. four persons entered into his house (meaning house No.13, Jadunath Basak Lane) leaping over the boundary wall. As he asked them about the reason of their entrance, they abused him. Thereafter, they threw two cocktails one after another towards the windows of house No.9/10 (3rd floor) from the roof of house No.14. Because of the explosions, glasses of the windows were broken. The persons, who committed the occurrence, were Ahamed Ali, Majibor, Khokon and Parvaj (herein petitioner). P.W.2 further stated that he saw all of them on the roof of adjacent house No.14.

P.W.3 Ashraf Ali, a local witness stated that on the date and time of occurrence he was working in a workshop situated at 14, Jadunath Basak Lane. He heard the sounds of two bomb explosions at house No.9/10. After ten/fifteen minutes of the occurrence, police rushed to the house and seized a small shell of cocktail and some pieces of broken glass in his presence. The landlord of the house Subal Das pointed out the said *alamats*. He heard that the accused Ahamed Ali had thrown the cocktails.

P.W.4 Shahar Ali, another local witness stated that on 13.9.1998 sometime after 9 p.m he heard the sound of bomb explosion. Accused Parvaz, Ahamed Ali and Khokon had exploded the bombs. On the following day a Sub-Inspector of police came to the house of occurrence and seized the *alamats* in his presence.

P.W.5, Enamul Kabir, a Sub-Inspector of police stated that at the time of lodgment of the *ejahar*, he was duty officer at the police station. He had recorded the *ejahar* and filled up the column of *ejahar*.

P.W.6 Md. Abdul Latif, another Sub-Inspector of police and the Investigating Officer stated that after he was assigned for investigation of the case, he visited the place of occurrence, prepared the sketch map with an index and recorded the statements of the witnesses under section 161 of the Code. In course of investigation, he arrested the accused Ahamed Ali. He found prima facie truth in the allegations and submitted charge sheet on 13.12.1998 under section 3 of the Explosive Substance Act. He proved the seizure list and his signature thereon and also proved the pieces of broken glass and shell of the cocktail as material exhibits.

After conclusion of trial, learned Judge of the Tribunal passed the impugned judgment and order on 30.11.2002 convicting and sentencing the petitioner and another as aforesaid. Police arrested the petitioner on 18.4.2005, in which event he moved in this Court with the instant criminal miscellaneous case under section 561A of the Code for quashment of the judgment and order, and obtained the Rule. Subsequently this Court enlarged him to go on bail.

This Case has been appearing in the cause list for many days with name of the Advocate for petitioner. But when we take it up for hearing, no one appears to press the Rule. In view of its long pendency, we take it up for disposal and allow the Deputy Attorney General to make his submissions.

Mr. Khizir Hayat, learned Deputy Attorney General appearing for the State-opposite party submits that in view of the evidence on record,

the allegations of explosions of two bombs by the accused including the petitioner have been proved beyond reasonable doubt. There is no illegality or infirmity in the impugned judgment and order, which calls for any interference by this Court in exercise of its inherent power under section 561A of the Code. He further submits that whatever small discrepancies and omissions are there in the evidence of the prosecution witnesses, cannot be taken into consideration for quashment of a judgment.

At the time of issuance of the Rule no record was called for. During long pendency of the Rule for last seven years, the petitioner also did not take any step to call for the record. So we are to base on the materials available in the record of the High Court Division.

It appears from annex-C series that the informant as P.W.1 deposed in full support of the prosecution case. In his evidence there is no departure from the *ejahar*. P.W.2, an eye-witness clearly mentioned the petitioner's name to be involved in the alleged occurrence and corroborated the evidence of P.W.1 in terms of time, space and manner of occurrence. P.Ws. 3 and 4 being two local witnesses stated that on the date and time of occurrence, they heard the sounds of bomb explosions and the *alamats* were seized in their presence. The Investigating Officer as P.W.6 proved the seizure list and also the pieces of broken glass and shell of a cocktail as material exhibits.

The scope of quashment of a judgment under section 561A of the Code is very narrow and limited. In the present case, learned Judge of the Tribunal considered the evidence on record and passed the impugned

judgment and order of conviction and sentence. Although a discrepancy is there in the evidence of P.W.3 regarding the time of seizure of *alamats*, it does not adversely affect the prosecution case. When the *ejahar* was lodged on the following day of occurrence i.e. 14.9.1998, evidence of P.W.3 that the *alamats* were seized immediately after the occurrence in the night on 13.9.1998 appears to be made out of forgetfulness. However, there is no scope to say that the judgment is based on no evidence or passed in total non-consideration of evidence. It is also not the case that the Metropolitan Special Tribunal had no jurisdiction to try the case or that it was not properly constituted. The impugned judgment and order, therefore, do not suffer from any illegality or infirmity and calls for no interference by this Court in exercise of its inherent power under section 561A of the Code.

The Rule, having no substance, is discharged. Petitioner Parvaz is directed to surrender before the trial Court to serve out the remaining period of his sentence.

Communicate a copy of the judgment.

Mohammad Marzi-ul-Huq, J:

I agree.