

18 SCOB [2023] HCD 264**HIGH COURT DIVISION
CRIMINAL REVISION NO. 1689 OF 2016**

**Md. Helal Uddin
Vs.
The State**

Mr. Md. Sarwar Hossain (Bappi),
D.A.G.with
Mr. Ambia Bulbul Reza, D.A.G. with
Mr. Prahalad Debnath, A. A.G. with
Mr. Lily Shah, A.A.G

Mr. S. M. Shahjahan with,
Mr. Mosharrof Hossain Sarder with
Mr. Mainuddin, Advocate
....for the petitioners

....For the opposite-parties

Heard on 25.01.2023, 05.02.2023,
07.02.2023 and 12.02.2023
Judgment on 07.03.2023.

**Present:
Madam Justice Fatema Najib**

Editors' Note:

In this case the informant was detained whimsically and tortured by some police personnel. When in the police station the informant refused to give confessional statement, the officer-in-charge caused severe injury to the informant and lodged two criminal cases against him. The informant challenging the proceeding before the High Court Division obtained direction on basis of which the instant case was filed. The trial court convicted the accused and sentenced him with imprisonment and fine. Appellate Court confirmed the conviction and sentence of the convict-petitioner. The convict-petitioner questioned about the delay in lodging the FIR and about the Medical report in this Criminal Revision. The High Court Division analyzing all the evidences found that as the case was against police personnel the informant made delay to lodge FIR due to fear of reprisal. He could file the FIR only after getting direction from High Court Division which sufficiently explains delay. Moreover, the High Court Division found that the medical report had minor discrepancies but the injury was proved by the witnesses. Consequently, the Criminal Revision was dismissed.

Key Words:

Torture in police custody; Delay in lodging FIR; Medical Report; Section 342 of the Code of Criminal Procedure 1898;

When injured in police custody, burden is upon them:**Section 342 of the Code of Criminal Procedure:**

From the evidence of P.W.4, 7, 8, 9, 12, 13, 5, 6 it appears the informant Kader had been taken as unhurt into the room of the accused Helaluddin in khilgaon thana whereon the accused had been injured. Since the alleged occurrence took place in police custody, it is duty of officer in charge to explain how an unhurt man was injured in his room. The accused was examined under section 342 of the Code of Criminal Procedure giving him an opportunity to explain the evidence and circumstances appearing against him. During the examination under section 342 of the Code of Criminal Procedure the accused said that he will give a written statement. But on perusal of record no written statement has been found. Both court below did not utter that the accused gave a

written statement. Since on declaration by the accused no written documents has been produced by the accused, no evidence has been adduced to defense himself which leads the statement made by prosecution witnesses that under custody of accused officer in charge of khilgaon, the informant had been inflicted chapati blow by the accused was remained unchallenged. (Para 53)

Basic pillars of Criminal Case:

It is pertinent to note that in a Criminal case, time, place and manner of occurrence are the 3(three) basic pillars upon which the foundation of the case stand on and the same are required to be strictly proved beyond reasonable doubt by the prosecution in a bid to ensure punishment for an offender charged with an offence. If in a given case any one of the above 3(three) pillars is found lacking or proved to be untrue then it is adversely react upon the entire prosecution case. (Para-55)

Torture in police custody if goes unpunished, the criminals are encouraged and the society suffers:

In recent years, torture in police custody is increasing. The crime in police custody is the worst kind of Crime in a civilized society. The court must keep in mind when the crime goes unpunished, the criminals are encouraged and the society suffers. The victim of crime or his kith and kin became frustrated and lost their confidence towards law. The victim/informant is a young BCS qualified man. Moreover, the two cases had been filed against him, wherefrom he had been released as no evidence had been found during the investigation. Considering those aspects I am of the view that the cruelty and violence with which the accused caused injury the victim deserves to be treated with strict and heavy hand. (Para-56)

JUDGMENT

Fatema Najib, J:

1. This Rule, at the instance of the convict-petitioner, was issued calling upon the opposite-party to show cause as to why the impugned judgment and order dated 27.07.2016 passed by the learned Additional Metropolitan Sessions Judge, 5th Court, Dhaka, in Metro Criminal Appeal No.458 of 2015, dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 17.05.2015, passed by the learned Additional Chief Metropolitan Magistrate, 2nd Court, Dhaka in Khilgaon Police Station Case No.4(1) dated 23.01.2012 corresponding to G.R.No.41 of 2012, convicting the petitioner under Section 324 of Penal Code and sentencing him to suffer simple imprisonment for three years and to pay a fine of Tk. 10,000/- in default of payment of fine to suffer simple imprisonment for three months more should not be set aside.

2. The prosecution case, in short, is that on 16.07.2011 at about 1.30 A.M the informant i.e. Md. Abdul Kader was returning back on foot from the residence of his aunt situated at Doctor's Quarter of Holy Family Hospital, Eskaton, Dhaka, towards Fazlul Haque Muslim Hall of the University of Dhaka and when reached near to the Durnity Daman Commission Office, Segunbagicha, some police personnel in civil dress rushed towards him and detained him and tortured him with lathi; At that time the informant asked the reason for detaining him disclosing that he is a student of University of Dhaka, even after knowing the identity of the informant, the police personnel tortured him and took him in Khilgaon Thana hajot; On 16.07.2011 at about 9.45 AM. the informant was taken before the officer-in-charge of that Police Station to obtain confessional statement by force; While refusing to do so the accused

caused serious injury on the informant's leg, backbone and different parts of his body; Thereafter, the accused at one stage being failed to get any such confessional statement gave Chapati blow beneath the left knee of informant and caused serious injury; Thereafter, the accused lodged two criminal cases against the informant under sections 399/402 of the Penal Code and also under section 19A of the Arms Act, 1978 respectively; The informant challenged the proceeding of said two cases before the High Court Division and obtained a direction; Thereafter, on the basis of that direction given by the High Curt Division the instant case has been filed.

3. S.I Md. Mahbubur Rahman Chakdar as a duty officer of the Khilgaon Police Station recorded the case under sections 323/324/325/326/331 of the Penal Code against accused Md. Helal Uddin.

4. After investigation police submitted charge sheet No.120 of Khilgaon Police Station, dated 26.03.2012 against the accused Md. Abdul Kader under sections 323/324/325/326/331 of the Penal Code.

5. The learned Chief Metropolitan Magistrate, Dhaka, took cognizance under section 331/324 of Penal Code against the accused person and transferred the case to the court of learned Additional Chief Metropolitan Magistrate, 2nd Court, Dhaka for trial.

6. The trial court on 01.10.2012 framed charge against the accused person under sections 331/324 of the Penal Code and the same was read over to the accused present on the dock who pleaded not guilty and claimed to be tried, Again on 02.03.2015 the charge was altered under section 227 of the Code of Criminal Procedure and the trial court again framed charge against the accused person under section 324 of the Penal Code and the same was read over to the accused who pleaded not guilty and claimed to be tried.

7. In order to prove the charge the prosecution has adduced as many as 13 (Thirteen) witnesses out of 15 charge sheeted witnesses and the documents produced were marked as Exhibit-1-2. After closing the evidence of prosecution, the accused Md. Helaluddin was examined under section 342 of the Code of Criminal Procedure and the evidences of prosecution case briefly narrated to him but again he pleaded his innocence and declined to adduce any evidence and he stated also that he will submit a written statement.

8. The defence case that could be gathered from the trend of cross-examination of the prosecution witnesses is of complete innocence and false implication. The further case of the defene is that he had not been beaten in concerned thana and after influencing the administration, the informant lodged the instant case against the innocent police officer.

9. Thereafter, learned Additional Chief Metropolitan Magistrate, Second court, Dhaka, on consideration of the evidences and materials on record, came to the conclusion that the prosecution had been able to prove the charge leveled against the accused and accordingly, convicted and sentenced him in the manner as noted at the outset.

10. Being aggrieved, the convicted accused as appellant filed Metro-Criminal Appeal No.458 of 2016 before the learned Metropolitan Sessions Judge, Dhaka, which was transferred to the learned Additional Metropolitan Sessions Judge, Fifth Court, Dhaka.

11. Upon hearing the parties and perusing the evidence on record learned Additional Metropolitan Sessions Judge, 5th Court, Dhaka, disallowed the appeal vide judgment and order dated 27.07.2016 affirming the order of conviction passed by the trial court.

12. Having aggrieved by and dissatisfied with the aforesaid judgment and order, the convict-accused as petitioner filed Criminal Revision No.1689 of 2016 before the High Court Division. Upon hearing learned Advocate for the parties and perusing the evidence on record, a Single Bench of the High Court Division made the Rule absolute by sending the appeal on remand to the appellate court below vide judgment and order dated 04.12.2018.

13. Feeling aggrieved, the convict-accused preferred Criminal Petition for Leave to Appeal under Article 103 of the Constitution.

14. Upon hearing their lordship of Appellate Division disposed of the Criminal Petition for Leave to Appeal by sending this Criminal Revision to this court constituted by Justice Fatema Najib with direction to dispose of within 6 months from the date of receipt of this judgment.

15. Mr. S. M. Shahjahan, the learned Senior Advocate on behalf of the convicted-accused submits that the alleged occurrence was held on 16.07.2011 and FIR had been lodged after 6 months on 23.01.2012. In this context he contended that delay in lodging the FIR is not properly explained which considered to be fatal of the prosecution case. He drawing my attention to Medical report Exhibit-2 submits that no time of examination of the alleged injury of the informant has been mentioned in the Medical report, the alleged Medical examination had been held on 06.07.2011 but doctor signed the report on 03.03.2012, the doctor who examined the victim was brought before court as witness P.W-3 but the said doctor stated in cross examination that if any injury is done by chapati then they mentioned chop wound but he did not mention the chop wound in the medical report which contradictory to the statement made in FIR. In this context he argued that the fact of causing injury is not believable and conviction should not be given relying on Medical report. He then submits the victim was not injured into the room of officer-in-charge of thana, actually the victim was wounded in Khilgaon E-block in front of old police Fari, during the preparation of dacoits and recovered the arms from the informant/victim and Co. Alam Badsha handed over the informant/victim including arms in khilgaon thana through G.D. He lastly submits there is no eye witness in the present case, the statements of prosecution witnesses are contradictory to each other and on the basis of those evidence the trial court as well as the appeal court below committed miscarriage of justice in awarding punishment to the petitioner as such the impugned judgment and order of the appeal court below is liable to be set aside.

16. Mr. Md. Sarwar Hossain (Bappi), learned Deputy Attorney General appearing on behalf of opposite party submits that delay in lodging the FIR was properly explained in the manner that two cases has been filed challenging the proceeding of case No.15 and 16 all dated 16.07.2011 of Khilgaon thana under section 399/402 of the penal Code and also under section 19A of the Arms Act, 1978 respectively before the High Court Division and obtained a direction and on the basis of direction he lodged the instant case. He further submits in the Medical report it has been stated sharp cutting injury and the informant was under care of central Jail which corroborate the statement of P.W-1 as..... ইনচার্জ অফিসার মোঃ হেলাল উদ্দিন আমাকে লাঠি দিয়ে শরীরে হাতে পিঠে আঘাত করে।। থানায় রেখে বিকাল ২.০০টা ২.৩০ টার দিকে আমাকে আদালতে নিয়ে আসে। সেখান থেকে আমাকে সেন্ট্রাল জেলেনিয়ে যায়। আমি জেল খানায় আমার মুমূর্ষ অবস্থার জন্য ব্যবস্থা নিতে বলি। পরবর্তীতে ঢাকা মেডিক্যাল হাসপাতালে আমাকে নিয়ে যায়।’’

17. But without mentioning the examination of time or the date of signature of doctor appears different date on medical certificate, these minor mistakes do not shake the basic version of the witnesses. He next submits that all the prosecution witnesses in a voice corroborated to each other that the place of occurrence is in the room of officer in charge of Khilgaon thana. In this context he tried to say that since the alleged occurrence had been held in police custody so, the accused is to prove that he is not involved with the alleged injury of the informant/ victim which he failed to prove. He drawing my attention to P.Ws- 4, 5, 6, 13 that the accused is involved with the injury of the informant/victim. He then submits that the alleged two cases had been lodged against the informant whereupon final report has been submitted which proved the allegation has been raised that the informant was involved with dacoity is false and cooked up the story by the police. With these submissions he prayed to discharge the revision.

18. Let me now advert to and scrutinize the relevant adduced by the prosecution together with the surrounding facts and circumstances of the case by juxtaposing the prosecution case with that of the defence version of the story.

19. Informant Md. Abdul Kader is the victim also. In his testimony this witness states that on 16.07.2011 at about 1.30 a.m he was returning back on foot from the residence of his aunt's house situated at Doctor's Quarter of Holy Family Hospital, Eskaton, Dhaka, towards Hall and when he was crossing Engineer Institute one man with Civil dress rushed to him and beat him with lathi. At that time the informant asked the reason for beating him. He disclosed his identity that he is the student of Dhaka University. On hearing, they became furious and beat him severely. Then they took him in Khilgaon thana. At about 9.45 on 16.07.2011 they have taken him before the then officer in charge. The officer in charge, Helaluddin caused him serious injury on hand, back bone and different parts of his body. At one stage, accused Helaluddin gave him chapatti blow beneath the left knee and caused serious injury. [The informant show his wound to the court]. Then he has been taken to a clinic beside the thana and he was taken back to thana after covering with the bandage of the wounded place. Then he was taken to court Hajat and from there he was taken to central Jail. In central jail, he told the authority to arrange better treatment and thereafter he has been taken to Medical College, Dhaka, his family went to High Court and at the direction of High Court, an inquiry was held by police department and Ministry of Law, Justice and Parliamentary Affairs followings which he lodged FIR which was marked as Exhibit 1 and his signature appearing thereon marked as Exhibit 1/1.

20. In reply to cross examination P.W 1 says he saw Helaluddin, officer in charge in thana at 10.00 a.m. He was arrested near to Durnity Daman Commission Road at 1.30 a.m. He saw many people in the car. He himself wrote the ejahar and read the same. He wrote in ejahar that two criminal cases has been filed against him. He denied the defence suggestion that one chapatti has been recovered from him. He was ill at that time. He informed his bleeding to the authority of central Jail, then he was taken to Medical Collage, Dhaka. Secretary, Asish Ronjon Das inquired about the matter and he gave evidence to the Secretary in inquiry. In his testimony he states that while he was arrested, another person named Mamoon was also arrested with him. In his testimony he also states that he had been beaten in front of Duduk for half an hour. He showed his forty five wounds to the secretary. He was qualified in BCS Cadre. He denied the defence suggestion that during the dacoity the general people and police in Civil dress arrested him with chapatti and car. He denied the defence suggestion that the wounds appear in his body was done by angry people and the police in

Civil dress. He also denied the defence suggestion that no one injured him in thana, he complained against the innocent police officer after influencing the administration, officer in charge did not injure him.

21. PW-2 Dr. Md. Shaheen is the concerned doctor who examined the victim Kader. In his testimony this witness identified his report exhibit-2 including his signature appearing thereon exhibit No. 2/1. In his testimony he states that he did not endorse that victim wounded earlier. He did not endorse in his report “multiple injury”.

22. PW-3 Abdur Rahman in his testimony states that he along with SI Alom Badshah sat on tool at ‘Jorpukur Matt’ at night 3:00 A.M on 15.07.2011, one private car stopped in front of them by putting break and 5/6 people sat therein, on direction of his higher officer they followed the car and at one time they made barricade and the people of that car tried to flee away and bluest bomb and ran away, the public followed them but they were showed fear with Chapati, the people held the said miscreants and tried to burnt out the car.

23. In reply to cross examination he states that the people who were showed fear with Chapati, one Chapati had been recovered from the informant Kader. The people held Kader and Mamoon.

24. PW-4 Md. Alam Badshah in his testimony states he along with his raiding force Kamrul Shaheed and Aleem were on duty at Jorpukur play ground under Khilgaon Thana on 15.07.2011 at 3:00 A.M, One car made slow and then they seized the car with 04 Chapati, and arrested two people namely Mamoon and Kader. He did not see to beat Kader. They took over Kader to thana as unhurt.

25. In reply to cross examination he states that from whom what type of weapon had been recovered were mentioned in seizure list. The another arrestee namely Mamoon told them that Kader threw bomb. The people beat him severely but it was not presumed to him that the arrestee informant and Mamoon were wounded severely.

26. PW-5 Aslam Mia in his testimony states that while he was on duty from morning 8:00 A.M to night 8:00 P.M on 16.07.2011, Helaluddin, officer in charge came to thana at 10:15am and told them to produce Kader and Mamoon in his room. Then he produced them before officer in charge in his room. After a while officer in charge called him and said that the informant need treatment. He saw bleeding fall on from the leg of Kader. After treatment from hospital ‘Khidma’ Kader was sent back to thana hazat. SI Alam Badsha lodge criminal cases against Kader being Nos. 15 dated 16.07.2011 and 16 dated 16.07.2011.

27. In cross he replied that he did not know whether Kader and Mamoon took treatment before or after arrest.

28. PW-6 Md. Matiur Rahman in his testimony asserts that on 16.07.2011 from morning 8:00 A.M to 10:00 A.M he was on duty in Khilgaon thana. Just at 10:00 A.M. he took over Mamoon and Kader including arms bullet to his immediate duty officer Constable Karim. Then he went to second floor of thana. After a while, he heard from Karim that Helaluddin, officer in charge gave Chapati below to Kader. Then he saw Kader was taken to hospital by Microbus which was used on duty named “Jemini duty”. He took over Mamoon and Kader as unheart in thana.

29. In cross by defence he denied that he did not tell to investigating officer that he saw from second floor that Kader was taken to hospital. He was not present when Kader was handed over. He has heard Mamoon, Kader were arrested with Chapati. He did not hear that the public had beaten Mamoon and Kader severly. He denied the suggestion by defence that he was involved in immoral activities and Helal refrained him from doing so and due to which he gave evidence against Helaluddin.

30. PW-7 Md. Majedul Hoq in his testimony state that he was on duty at thana from night 8:00 A.M. on 15.07.2011 to morning 8:00 A.M on 16.07.2011. During his duty he saw SI Alam Badsha with a raiding force kept Mamoon and Kader at 5:30 morning in hazat by GD entry. At 8:00 am he handed over his duty to his next police officer SI Aslam and went to his house. After that, he heard that Helaluddin gave Chapati below to Kader. He also states he took over Kader as unheart to next duty officer.

31. In cross by defence he stated that he did not read the GD filed by SI Alam Badsha when handed over Mamoon and Kader. He heard that SI Alam Badsha lodge two criminal cases against Mamoon and Kader. He did not see any injury in forehead or leg of Mamoon. SI Alam Badsha lodge GD which was in his custody but he did not submit before investigating officer. He heard that chapatti had been recover from the custody of Mamoon and Kader.

32. PW-8 Mahfuj Alam states while on duty at Khilgaon Thana Kader and Mamoon were handed over to thana as unheart. He then handed over the said Kader and Mamoon to next duty officer. He heard the accused had been beaten.

33. In reply to cross by defence he stated that he did not make any statement to investigating officer.

34. PW-9 Kamrul Hossain states that on 15.07.2011 from morning 8.00 A.M. under leadership SI Alam Badsha with raiding force ASI Shahidul Islam, Constable Alimuddin, and he on special duty by Microbus. At 3.00 A.M. they were on duty at 'Jurapukur' under Khilgaon thana, one colored car was going speedily and they followed the car. At one stage they stopped the car in kakrail turning point, bomb was threw at pointing them. He ordered SI Alam Badsha and Shahidul to shoot, the miscreants fled away but they arrested Mamoon and Kader.

35. The Local people beated Mamoon and Kader. He handed over the Kader with good health in thana.

36. In reply to cross by defence he states before arrest the public can injure Kader by lathi. There was no bandage on body of Mamoon and Kader. At the time of arrest, Mamoon and Kader were not wounded or covered with bandage.

37. PW-10 Alimuddin in his testimony states that when Mamoon and Kader were arrested, chapatti had been recovered. The public did not beat them but tried to hold them.

38. PW.11 Shahidur Rahman in his testimony states that he was on duty at 3.00/3.30 A.M. in Jurapukur play ground on 15.07.2011 from morning 8.00 A.M . At that time a private car was crossing them, then they followed the car. They tried to seize the said car in Kakrail crossing (ককরাড়), the people from that car threw bomb towards them. The people after

gathering caught hold them and then brought them into thana. Mamoon admitted that Kader threw bomb. The following day he heard that Kader had been given chapati blow, when they handed over Kader, he was in good health.

39. In reply to cross by defence he states that while in giving evidence before police commissioner he admitted that at thana he produced the private car including chapatti, Mamoon and Kader. He gave evidence that the people beat Kader but Kader was not injured. He denied the suggestion by defence that Kader was handed over in Thana with severely blood wounded.

40. PW.12 Abu Syed Akand is the investigating officer of the case. In his testimony this witness claims that officer in charge handed over the charge of investigation upon him. During investigation, he visited the place of occurrence and prepared sketch map (Ext-2) and index(Ext-3). This witness also proves his signatures appearing there on (Ext-2/1, 3/1). He tried to seized the alamat. He prayed to take the seized alamat which has been seized in case No. 16(7)”, under section 19A of the Arms Act as alamat in this case. He recorded the statement of witness under section 161 of the Code and collected the Medical Certificate. After completion of the investigation, he submitted charge sheet against the accused being No. 120 dated 26.03.2012.

41. In reply to cross examination this witness says that he knows at the time of handing over GD entry is to file. He also states at the time of handing over Kader to thana, he does not know whether any G. D. entry has been filed or not, he does not know whether SI Alam Badsha lodged GD or not, he does not read said GD. During his investigation he did not get any information whether Kader was injured in Adalat or Hospital. He denied the suggestion of defence that it was written in GD that Kader was injured and treatment has given in Khidma Hospital.

42. PW.13 Abdul Karim in his testimony states that on 16.07.2011 he was on duty from night 4.00 to 6.00 in Khilgaon Thana. On direction of Aslam he kept Kader and Mamoon in lock up. On the following day he was on duty from 10.00 A.M to 12.00 A.M. Helaluddin, officer-in-charge called him to bring Kader in his room from lock-up. Helaluddin, officer in charge told him to go on post and he went to post. After 5/7 minutes he heard an outcry and saw blood on left leg of Kader. Helal Uddin told the driver to take Kader in Hospital named ‘Khidma’ for treatment and after treatment Kader was returned back to thana from where Kader and Mamoon were sent to Adalat.

43. In reply to cross by defense he states that there was injury on forehead of Mamoon and little swell on body of Kader. Mamoon and Kader were brought before duty officer, before taking them into lock up, in what condition Mamoon and Kader were taken to thana in this regard G.D entry had been lodged by SI Alam Badsha. He did not see G.D entry or heard about the statement of G.D.

44. I have heard the arguments advanced by the learned Advocates of both sides and also have gone through the impugned judgment and order passed by both court below, oral and documentary evidences and other materials available on record.

45. From a careful scanning of the evidences and materials on record, it is patent that at about 1.30 am on 16.07.2011 the informant was returning back on foot from the residence of his aunt situated at Doctors Quarter of Holy Family Hospital, Eskaton, Dhaka towards Fazlul

Haque Muslim Hall of the university of Dhaka and when reached near to the Durnity Doman Commission Office, Sagun Bagicha, some police personal with civil dress rushed towards him and detained him and tortured him with lathi. At that time the informant told them that he is a student of University of Dhaka, even after knowing his identity, the said police personal took him in khilgaon thana hajat and at about 9.45 A.M on the same day, the informant was taken before the officer in charge of that police station to obtain confessional statement by force, after failing to do so the accused Helal caused serious injury on the informants leg, back-bone and different parts of his body and at one stage the accused gave chapati blow beneath the left knee of informant and caused serious injury. Thereafter he was sent to central jail wherefrom he was sent to Dhaka Medical College for treatment and a doctor examined him. Let me now examine the medical report Exhibit-2 in order to ascertain what injury was found on the body of victim-informant.

46. The relevent portion of Medical Report runs as follows:

“Date of occurrence 16.07.2011.

Time of occurrence....

am/pm History of the patient

H/W Physical Assault sharp cutting injury in left leg (post Aspect).

Injury Note:(1) One sharp cutting injury in posterim aspect of left leg measuring 10 cm x 5cm x 6cm comment: The of injury: Injury No.(1) is simple in nature”

47. From the aforesaid mention it appears manifestly that the victim was caused sharp cutting injury. P.W.-2 proves the medical report including his signature appearing thereon as Exhibit-2 and 2/1 respectively.

48. The defense after raising objection argued that since the column of time of occurrence is blank and the doctor signed the said report on 03.03.2012 i.e after 5 months of the alleged occurrence, so the report is created after thought.

49. It is evident from the said medical report that the date of examination is 16.07.2011 and the address given in the report “C/O central jail Dhaka” and one injury is mentioned and that is posterior aspect of leg. From the evidence of P.W-1, it appears that at 9.45 A.M on 16.07.2011 in the morning he was taken before officer in charge of Khilgaon Thana. The officer in charge caused injury him on back bone, hand and on different parts of his body. It is also evident the officer in charge gave chapati blow beneath the left knee. In cross examination nothing had come out that he was not taken to Medical College, Dhaka for treatment from central jail. Learned Defence Advocate has drawn my attention to the statement of doctor in cross examination “ চাপাতি দিয়ে আঘাত প্রাপ্ত হলে সাধারণত chop wound লিপিবদ্ধ করি ” and submits that since no chop wound has been mentioned so, the version of P.W.1 that he was caused injury by chapati is false. This minor discrepancies do not shake the basic version of the witness that need not be given much importance and testimony should not be jetisoned. However, Ext-2 including coupled with the evidence of P.W.Nos.2, 1 that the victim had been caused injury by sharp cutting weapon is proved.

50. It has been raised by defence that the alleged occurrence had not been taken place in the room of officer in-charge of Khilgaon Thana, actually, the informant had been caught red handed with arms during the preparation of dacoity and the informant had been caused injury by people. Alam Badshah P.W.4 in his testimony states that he along with his raiding force named Kamrul Alam and Shaheed were on duty on 16.07.2011 at 3.00 am at play ground named Jorapukur under khilgaon thana then one Car was coming slowly and they seized the

Car with 4 chapati and arrested two persons named Mamoon and Kader. He also states he did not see to beat Kader and handed over Kader to thana as unhurt.

51. Md. Majedul Hoq **P.W-7** in his evidence clearly states that while he was working as duty officer in concerned thana at 5.30 morning on 16.07.2011 SI. Badsha Alam with his raiding force came with Mamun and informant Kader. The said Alam Badsha and his raiding force kept Mamun and Kader at thana Hajat through G.D. But he does not read that G.D. Mahfuz Alam **P.W-8** discloses that on 16.07.2011 while he was on duty at Khilgaon, Thana S.I. Alam Badsha handed over Mamun and Kader to them with good health. Kamrul Hossain **P.W-9** claims himself member of raiding force was on duty with Alam Badsha at jora pukur play ground from where Kader and Mamun was arrested. They handed over the said Momoon and Kader with unhurt. At the time of arrest they were not wounded or covered with bandage. From the evidence of investigating officer **P.W-12** it is found that he even did not read the G.D, not only that he does not know whether any G. D. entry has been filed or not. Abdul Karim **P.W-13** in his testimony states that officer in charge Halaluddin told him to bring Kader from lock up and he did so. He was on duty on 16.07.2011 from 10 Am to 12 am, after 5/7 minutes of handed over Kader to officer in charge Helal, he heard a sound of out cry and saw blood on left leg of the informant Kader. He states in cross examination that when the informant was taken to thana he saw little bit swell on body of Kader. Aslam Mia **P.W-5** in his testimony states while he was on duty from the morning 8.am. to evening 8.p.m.on 16.07.2011, Helaluddin officer in charge came at 10.15 and told Co.Karim to produce Kader and Mamun from the lock up in his room. After a while, Officer in charge called them to take Kader for treatment and then he saw bleeding was falling from leg of the informant. He also stated kader was taken to Hospital named 'Khidma' for treatment and after treatment he had been kept in thana Hajat. Md. Motiur Rahman **P.W.6** in his testimony asserted that while he was on duty from morning 8.am. to 10.00 am, at 10 am he handed over Mamun with Arms to Co. Karim. He also stated at the time of handing over Kader and Mamun are well in health. No G.D. entry was filed to the effect that Badsha Alam handed over the informant along with Mamun including Arms to the thana. One photo copy of G. D. entry Bohi is lying with the record. It appears the date is over writing. The previous date was 15.04.2011 which was by over writing written 15.07.2011. Moreso, the investigating officer himself did not see the said G. D. even he does not know whether G. D. entry has been filed or not.

52. So, the submission of learned Advocate that the informant was wounded during the dacoity and handed over to thana by G. D. entry do not have any basis.

53. From the evidence of P.W.4, 7, 8, 9, 12, 13, 5, 6 it appears the informant Kader had been taken as unhurt into the room of the accused Helaluddin in khilgaon thana whereon the accused had been injured. Since the alleged occurrence took place in police custody, it is duty of officer in charge to explain how an unhurt man was injured in his room. The accused was examined under section 342 of the Code of Criminal Procedure giving him an opportunity to explain the evidence and circumstances appearing against him. During the examination under section 342 of the Code of Criminal Procedure the accused said that he will give a written statement. But on perusal of record no written statement has been found. Both court below did not utter that the accused gave a written statement. Since on declaration by the accused no written documents has been produced by the accused, no evidence has been adduced to defense himself which leads the statement made by prosecution witnesses that under custody of accused officer in charge of khilgaon, the informant had been inflicted chapati blow by the accused was remained unchallenged.

54. Learned Advocate for defence argued that delay in lodging FIR is considered to be fatal of prosecution case. It is evident that the alleged occurrence took place in police

custody, any complaint against such torture is generally not given any attention by the police officers because of ties of brotherhood. No first information report at the instance of the victim or his kith and kin is generally entertained and even higher police officer turned a blind eye to such complaints. When the relatives of the informant went to High Court challenging the proceeding of two criminal cases filed against him whereupon at the direction of High court an enquiry was held headed by secretary Ministry of Law Justice and Parliamentary Affairs and as per direction of High Court Division the informant lodged this case. So, it can be presumed that the informant did not lodge FIR in time due to fear of police. So, the submission of learned Advocate for the defence has no substance.

55. It is pertinent to note that in a Criminal case, time, place and manner of occurrence are the 3(three) basic pillars upon which the foundation of the case stand on and the same are required to be strictly proved beyond reasonable doubt by the prosecution in a bid to ensure punishment for an offender charged with an offence. If in a given case any, one of the above 3(three) pillars is found lacking or proved to be untrue then it is adversely react upon the entire prosecution case. In the instant case, according to prosecution story, the victim/informant was injured by sharp cutting weapon as per medico-legal evidences furnished by doctor Md. Shaheen. The prosecution witnesses by corroborating each other stated that the victim/ informant was taken to Thana Khilgaon into the room of accused Helaluddin, the then officer in charge of khilgaon thana in the morning in between 9.45 A.M to 10.00 A.M on 16.07.2011 whereon he had been caused injury by sharp cutting chapati. No explanation has come out from the accused officer-in-charge. He had an opportunity to defence himself during the examination of the accused under section 342 of the Code of Criminal Procedure, but failed to do so. So, Exhibit No.2, coupled with P.Ws 4, 7, 8, 9, 12, 13, 5, 6 unerringly pointing towards the guilt of the accused.

56. In recent years, torture in police custody is increasing. The crime in police custody is the worst kind of Crime in a civilized society. The court must keep in mind when the crime goes unpunished, the criminals are encouraged and the society suffers. The victim of crime or his kith and kin became frustrated and lost their confidence towards law. The victim/informant is a young BCS qualified man. Moreover, the two cases had been filed against him, wherefrom he had been released as no evidence had been found during the investigation. Considering those aspects I am of the view that the cruelty and violence with which the accused caused injury the victim deserves to be treated with strict and heavy hand.

57. Accordingly, this revision has no merit.

58. In the result, the Revision is dismissed. The impugned judgment and order dated 27.07.2016 passed by the learned Additional Metropolitan Sessions Judge, Fifth Court, Dhaka in Metro Criminal Appeal No.458 of 2016 disallowing the Appeal and there by affirming the judgment and Order dated 17.05.201 passed by the learned Additional Chief Metropolitan Magistrate, Second Court, Dhaka in G. R. Case Npo.41 of 2012 corresponding to Khilgaon Police Station Case No.4(1)2012 convicting the petitioner-accused under section 324 of the Penal Code and sentencing him to suffer simple imprisonment for a period of 3(three) years with a fine of Tk.10,000/-, in default to suffer simple imprisonment for a period of 3(three) months more is hereby confirmed. Bail bond is recalled. The period during which the convicts was in custody in connection with this case prior to this conviction shall be deducted from the above period of sentence of imprisonment.

59. The petitioner is directed to surrender before the Additional Chief Metropolitan Magistrate, Second Court, Dhaka within three months from the date of receipt of this judgment to serve out the sentence upon him. In default, warrant of conviction be issued.

60. Send down the lower Court records along with a copy of this judgment to the Court below at once.