

3 SCOB [2015] HCD 122**High Court Division
(Criminal Appellate Jurisdiction)**

Mr. Sk. Atiar Rahman
...For the Appellants

Criminal Appeal No. 300 of 1998

Zakir Khan and others
...Appellants

Mr. MA Mannan Mohan D.A.G with
Mr. Nizamul Haque Nizam A.A.G and
Mr. Atiqul Haque Salim A.A.G.
.....For the State.

-Versus-

The State
...Respondent.

Heard on 02.04.2015, 08.04.2015,
09.04.2015, 12.04.2015 and Judgment on:
13.04.15

Present:

Mr. Justice Shahidul Islam

And

Mr. Justice K. M. Kamrul Kader

Evidence Act, 1872**Section 3:**

There is no reason why the evidence of the business partners should be discarded simply because they belonged to a construction firm. They came before the Court and testified to the occurrence. They were fully cross-examined by the defence. Their evidence is also evidence with the meaning of Section 3 of the Evidence Act. The prosecution witness Nos. 2, 4, 6 and 7 are material witnesses though they are business partners of the P.W. No. 5, the informant but cannot be considered as interested witness. There is no reason that the testimony of P.W. Nos. 2, 4, 5, 6 and 7 can be discarded or liable to be flung to the wind simply because they happened to be business partners.

... (Para 32)

Judgment**K. M. Kamrul Kader, J.**

1. This appeal has been preferred at the instance of 1. Zakir Khan, 2. Farid, 3. Shipon, and 4. Benjir Murshed Mridha, challenging the judgment and order of conviction and sentence dated 16.02.1998 passed by the learned Judge of Shantrash Mulak Aparadh Daman Tribunal, Narayangonj in Shantrash Mulak Aparadh Daman case No. 17 of 1994 convicting the appellants under Section 4 of the Shantrash Mulak Aparadh Daman Ain and sentencing them to suffer rigorous imprisonment for 14 (fourteen) years and to pay a fine of Taka 20,000/- each in default to suffer rigorous imprisonment for 2 (two) years more.

2. The prosecution case, in short, is that one Md. Shamyoun Kabir as informant lodged a First Information Report with the Fatullah Police Station, Narayangonj on 26.07.1994 alleging *inter alia* that the informant alongwith his partners got the construction work of Daovog Banglabazar Government Primary School in the name of M/S. Kabir Construction and after receiving the work-order from the authority, they started construction work in the said school. On 24.07.94 at about 3.00 p.m. accused 1. Md. Zakir Khan, 2. Farid, 3. Banajir

Murshed and 4. Shipon alongwith 10/12 persons being armed with deadly weapons like pistol, short rifle, pipe gun etc. came to the place of occurrence and putting them in fear of death and demanded an amount of Taka 50,000/- as *chanda* (subscription) and ordered to stop the construction work. They also confined the informant and his partners and compelled them to pay an amount of Taka 20,500/-on spot. Thereafter, the informant and his partners informed the matter to Thana Nirbahi Officer and others. The Informant lodged the Ejahar on 26.07.1994 and the same was registered as Fatullah Police Station case No. 17 dated 26.07.1994, under Section 4 of the Shantrash Mulak Aparadh Daman Ain, 1992.

3. Inspector Md. Sirajul Islam, the Officer-in-Charge of the Fatullah Police Station as Investigating Officer investigated the case and on conclusion of the investigation and after finding *prima facie* case against these appellants, he submitted a charge sheet being No. 92 dated 10.09.1994 under Section 4 of the Shantrash Mulak Aparadh Daman Ain 1992.

4. Thereafter, the case record was transmitted to the Court of Shantrash Mulak Aparadh Daman Tribunal, Narayangonj, who took cognizance of the offence and the same was registered as Shantrash Mulak Aparadh Daman case No. 17 of 1994. At the commencement of the trial, the learned Judge of the Tribunal framed charge against the appellants under Section 4 of the Shantrash Mulak Aparadh Daman Ain, 1992 to which the appellant Banjir Murshed Mridha pleaded not guilty and claimed to be tired. The charge could not read over to the other accused persons as they are fugitive.

5. During trial the prosecution examined as many as 8 (eight) witnesses but the defence examined none. However, they cross examined the witnesses.

6. The defence case as it appears from the trend of cross examination are that the accused persons are innocent and they have been entangled in this case out of previous enmity and political rivalry between the supporters of two political parties and nothing has happened as alleged in the First Information Report and the accused are not involved with the alleged incident.

7. After conclusion of the taking evidence, the accused Zakir Khan was examined under Section 342 of the Code of Criminal Procedure to which he again pleaded not guilty and claimed to be tired. The other accused persons were not examined under Section 342 of the Code of Criminal Procedure as they are fugitive. After conclusion of the trial, the learned Judge of the Shantrash Mulak Aparadh Daman Tribunal, Narayangonj convicted and sentenced the appellants as aforesaid.

8. Having aggrieved by and dissatisfied with the judgment and order of conviction and sentence the appellants preferred this instant appeal before this Court.

9. Mr. Sk. Atiar Rahman, the learned Advocate for the convict appellants taking us through the entire evidence on record and submits at the very outset that in passing the impugned judgment and order the learned Judge of the Shantrash Mulak Aparadh Daman Tribunal, Narayangonj seriously failed to consider that the prosecution totally failed to prove their case by adducing reliable oral and documentary evidence. The learned Judge also failed to consider the defense case, which more probable that the appellants were falsely implicated in the instant case due to previous enmity and political rivalry between the supporters of two political parties. He further submits that all of the prosecution witnesses are interested witnesses and out of 8 (eight) prosecution witnesses, P.W. No. 1 is the Magistrate, P.W. No.

3 is the headmaster of the school and P.W. No. 8 is the investigating officer of the case. The prosecution witness Nos. 2, 4, 5, 6 and 7 are partners of the firm namely, M/S. Kabir Construction Ltd. P.W. No. 3 the headmaster of the school and the P.W. No. 4 Sharif Hossain Bhuiyan is a partner of the informant and proprietor of the construction firm did not support the prosecution case and they were declared hostile by the prosecution. Prosecution witnesses No. 2, 5, 6 and 7 are claim to be eye witness of the alleged occurrence but they made contradictory statement relating to the time, place and manner of the occurrence and they failed to corroborate each other on material points but the learned Judge of the Tribunal, relying upon unreliable and interested witnesses convicted these appellants. He also submits that during trial the prosecution examined 8 (eight) witnesses, out of 11 (eleven) charge sheeted witnesses. The charge sheet witnesses No. 7 Motiur Rahman and No. 8 Diman Kanti Borua are government officials and they witnessed the incident but they were not examined by the prosecution. There is no independent and disinterested witness in this case to prove the prosecution case and there is no explanation from the side of the prosecution as to why their non-production of any witness from surrounding area. Failure to produce vital witnesses and best evidence before the Court without any explanation or reason, attracts inevitable legal presumption that if they would have been examined, will not support the prosecution case and as such, an adverse presumption must be drawn against the prosecution for non-examination of such material and vital witnesses and they are entitled to get benefit of doubt under section 114(g) of the Evidence Act. He then submits that the conviction and sentence passed by the learned Tribunal Judge is unsafe and liable to be set aside and he prays for allowing the appeal. He lastly submits that the sentence is severe and harsh and if we uphold the impugned judgment and order of conviction and sentence then he prays for reduction of the sentence of the appellants in consideration of the manner, facts and circumstances of the case.

10. To substantiate his submission he place reliance on the decisions in the cases of *Sarafat Mondal @ Mander Mondal and others vs. State, 11 BLC (HD) 1, State vs. Sarowaruddin 5 BLC(2000) 451, Khairul @ Abul Kalam and another vs. State, Siddique Ahmed @ Md. Siddique and others vs. The State 1985 BLD, 203, The State vs. Md. Mukul @ Swapan 13 MLR (AD) 146, Abul Kalam and others vs. State 12 BLC(2007) 76 and Monu Sheikh & others vs. The State 12 BLT HCD)2004, 176.*

11. Mr. M. A. Mannan Mohan, the learned Deputy Attorney General appearing for the state having taken us through the materials on record make his submission supporting the conviction and sentence and opposing the appeal. He submits that all facts have been proved by the cogent, credible and reliable evidence of the prosecution witnesses. He also submits that the learned Judge of the Shantrash Mulak Aparadh Daman Tribunal, Narayangonj rightly found the appellants guilty under Section 4 of the Shantrash Mulak Aparadh Daman Ain, 1992. So the judgment and order of conviction and sentence do not call for any interference from this court. He further submits that the prosecution proved their case beyond reasonable doubt. There is no contradiction in their statements on any material point. The P.W. Nos. 2, 4, 6 and 7 are material witnesses though they are business partners of the P.W. No. 5 the informant but cannot be considered as interested witness. There is no reason that the testimony of P.W. Nos. 2, 4, 6 and 7 can be discarded or liable to be flung to the wind simply because they happened to be business partners of the P.W. No. 5 informant. The learned Judge rightly and correctly put reliance on the testimony of the P.W. Nos. 2, 5, 6 and 7 as they are eye-witness to the occurrence and convicted and sentenced these appellants as aforesaid. There is no illegality or irregularity in the said judgment and order of conviction and sentence, the prosecution witnesses corroborated with each other on material points and

the judgment and order of conviction and sentence should be upheld by this Court. Learned Assistant Attorney General further submits that all the P.Ws. proved their case by adducing reliable oral and documentary evidence. The investigating officer investigated the case properly and fairly. The learned Judge, after perusing the materials on record rightly convicted these appellants and as such, the appeal preferred by these appellants should be dismissed.

12. Before entering into the merit of this appeal, let us discuss the prosecution witnesses one after another.

13. P.W. No.1, Md. Amir Hossain, the Magistrate, 1st class cognizance Court, Narayangonj deposed that on 08.09.1994 he recorded the statement of the witnesses Fida Hasan Khan, Sharif Hossain Bhuiyan, Monir Hossain Bhuiyan and Jahir Hossain Bhuiyan under section 164 of the Code of Criminal Procedure and these are marked as exhibits- 1 to 4 and his signatures marked as exhibits 1/1, 2/1, 3/1 and 4/1 and the signatures of the witnesses marked as exhibits- 1/2, 2/2, 3/2 and 4/2 respectively.

14. During cross examination this witness deposed that the investigating officer send these witnesses for recording their statements. He denied the suggestion that the statements of the witnesses are not made voluntarily.

15. During cross examination by the State Defence Lawyer that this witness deposed that he complied with the provision of sections 164 and 364 of the Code of Criminal Procedure. He denied the suggestion that he did not complied the provision of law, at the time of recording the statement of witnesses.

16. P.W. No. 2, Md. Zahir Hossain Bhuiyan in his deposition deposed that on 17.07.1994, thereafter he stated that on 24.07.1994 at about 3.00 p.m. they were working at Banglabazar Primary School. He is a contractor. He also deposed that on the alleged date of occurrence, they were constructing the roof of the said school and in the construction side his partners namely Fida Hasan Khan, Monir Hossain Bhuiyan and Work Assistant Dhiman Babu and Assistant Engineer Abdul Mannan were present. At that time, accused Farid, Morshed and Zakir Hossain Khan alongwith 10/12 accused persons came to the place of occurrence and ordered to stop the construction work. Thereafter, on gun point they took his partner Fidha Hasan Khan and Monir Hossain to a room and 10/12 terrorist, who were waiting outside demanded an amount of Taka 50,000/= as *chanda*. He also deposed that after few moments later, Monir Hossain and Fidha Hasan Khan came out from the said room and informing them that the accused Morshed, Farid and Zakir Khan took away an amount of Taka 20,000/= from them. He identified the accused Morshed on dock. This witness also deposed that he made statement before the Magistrate, 1st class cognizance, Narayangonj, on 08.09.1994. He identified his signature on it, which marked as exhibit-4/2.

17. During cross examination by the accused Benjiar Morshed this witness deposed that his firm name is M/S. Zahir Traders and Monir Hossain Bhuiyan, Fida Hasan Khan, Sharif Hossain Bhuiyan, Sumayaun Kabir and Arshaduzzaman are his partners. They got this construction work under the firm namely M/S. Kabir Construction. They are six partners in the construction firm. They were present at the time of alleged incident. This witness admitted that at the time of alleged occurrence the guard was not present, however, the headmaster of the school was present there. He also deposed that on the alleged date of occurrence the school was closed due to strike. He deposed that on that day, there are 20/25

workers were working at the construction side. The accused persons assaulted the chief mason and one labour. The labours also witnessed the incident, the name of the chief mason is Mannan Miah however, he could not disclose the name of the other labours. This witness also admitted that three accused persons took away an amount of Taka 20,000/- as *chanda*, but he did not witness this incident as they are inside the room. The accused persons stayed at the place of occurrence near about one and half hours. The accused persons also guarded the main gate of this school. As the accused persons left the place of occurrence, they informed the incident to the Upazila Nirbahi Officer on 24.07.1994 and Informant Kabir lodged this First Information Report on 24.07.1994 or 25.07.1994. This witness also deposed that they informed about the incident to the member of the school committee, local Chairman and other renowned person of the locality. He made statements to the learned Magistrate as well as the investigating officer. He denied the suggestion that he did not made any statement to the investigating officer that the accused person forcibly took his partners into a room and the accused persons did not put them in fare of death. He denied the suggestion that they lodged false and fabricated allegation against the accused Banjir Morshed and the accused Morshed holding arms in his hand. He denied the suggestion that the accused Morshed did not extort any money and he is innocent. He denied the suggestion that Sumayaun Kabir is an accused of a murder case.

18. The State Defence Lawyer adopted the cross examination of the accused Morshed. During cross examination the State defence lawyer, this witness admitted that the informant Sumayaun Kabir is a politician. He could not disclose whether accused Jahir Hossain and others joined in BNP alongwith 5,000 workers. He denied the suggestion that due to the political rivalry they lodged this instant case. He denied the suggestion that he deposed falsely in this case.

19. P.W. No. 3, Jahid Ali, is the headmaster of the Deobog Banglabazar Government Primary School, in his testimony, testified that the alleged occurrence took place on 24.07.1994 and on that day the construction work was carried out in his school. He was present at the school on that day, when the terrorist act was committed in his school. However, he did not witness this incident. He also deposed that after the incident police went to the school, however he could not recall what he said to the police. At this stage, he was declared hostile by the prosecution and cross examined him.

20. During cross examination by the prosecution he deposed that he did not know whether accused Farid, Morshed, Shipon and Jakir being armed with deadly weapon went to the school and demanded Chanda (Subscription) and stopped the construction work. He could not disclose that the accused persons took away an amount of Taka 20500/- from the owner of the firm. He denied the suggestion that at the instigation of the accused persons he suppressed the facts and deposed falsely in this case. The defence declined to cross examine him.

21. P.W.No.4, Md. Sharif Hossain Bhuiyan is the proprietor of M/S. Sharif Engineering and Building. This witness deposed that six friends namely Samayaun Kabir, Monir Hossain, Zahir Hossain, Asaduzzaman and this witness together run this business firm and they obtained a work-order for construction of the Banglabazaar Government primary School. The incident took place at about one year back. On that day, they are constructing the roof of the said school and at the afternoon, some young persons came to the place of occurrence and demanded *Chanda* and they also threatened them. His partners informed him that the terrorists took away an amount of Taka 20,000/- and assaulted them. However, he could not

disclose that who demanded the said *chanda* (subscription). At this stage he was declared hostile by the prosecution and cross examined him.

22. During cross examination by the prosecution he deposed that he could not recall what had happened on 24.07.1994 however, he heard that the accused Shipon, Morshed, Farid and Zakir Khan demanded *chanda*. He denied the suggestion that they demanded *chanda* and committed terrorist acts in his presence. He denied the suggestion that at the instigation of the accused persons, he deposed falsely in this case. He did not identify the accused on the dock. He did not witness the incident and the defence declined to cross examine him.

23. P.W.No.5, Md. Sumayaun Kabir is the informant of this case. During his deposition this witness deposed that the alleged incident took place on 24.07.1994. They obtained a work-order for construction of the Dovog Banglabazar Primary School. He also deposed that on the alleged date of occurrence, they are working to construct the roof of the said school, at that time, some terrorist came to the place of occurrence and stop the construction work in presence of the headmaster of the said school, the Thana Assistant Engineer and his partners namely Tusi, Monir, Mohan, Milon and Sharif. This witness deposed that they demanded an amount of Taka 50,000/= as *chanda* and they are holding different kinds of arms in their hand. He deposed that they in fear of the terrorists and under duress gave them an amount 20,500/- as *chanda*, as the terrorists also threatened them. He also deposed that the terrorists threatened the headmaster and other persons present there and as such they flee away from the place of occurrence. The accused Zakir Khan, Morshed, Shipon, Ruhel and some other terrorists demanded *chanda* and threaten them on different occasions. This witness also deposed that on the alleged date of occurrence the accused Zakir, Morshed, Ruhel, Shipon and some other terrorists being armed with deadly weapon came to the place of occurrence and demanded an amount of Taka 50,000/- as *chanda* and threaten them and they under duress gave them an amount of Taka 20,500/=. At that time, accused Zakir Khan was waiting outside the school. After the alleged incident they informed the matter to the Thana Nirbahi Officer (TNO) and Thana Engineer. Thereafter, on 26.07.1994 he lodged this First Information Report, which marked as exhibit -5 and his signature on it marked as exhibit-5/1. He identified the accused Zakir Khan on dock.

24. During cross examination by the accused Zakir Khan, this witness deposed that the accused Zakir lives in the Dovog area and the place of occurrence situated under the Fatullah Police Station. The house of accused Zakir Hossain is situated one mile away from the place of occurrence. This witness lived in chashara under Fatullah Police Station. This witness deposed that his firm name is M/S. Kabir Construction and the work-order was allotted to his firm. He alongwith other partners owned this firm. This witness also deposed that they started the construction work three months before the alleged incident. He admitted that this witness and accused Zakir Khan are not members of Awami league, however, they were members of Jatio Party, lateron accused Zakir Khan joined in B.N.P. He denied the suggestion that due to political dispute aroused between them, the accused Zakir joined the other political party. He denied the suggestion that he lodged this case on false allegations against the accused Zakir Khan due to political rivalry. He denied the suggestion that the accuseds did not demand any *chanda*, at the instigation of accused Zakir Khan.

25. P.W.No.6 Monir Hossain Bhuiyan, in his deposition deposed that the alleged occurrence took place on 24.07.1994, at the Devog Banglabazar primary School. On that day, the construction work was carried on at the said school and they were constructing the roof of the school. At that time, some terrorists came to the place of occurrence and demanded

chanda (subscription) and they behaved badly. This witness deposed that the terrorists also threatened them and under duress they compelled to give an amount of Taka 20,500/= to the terrorist. The terrorists demanded an amount of Taka 50,000/= as *chanda* (subscription), on that day. The accused Zakir Khan, Morshed, Shipon and other came to the place of occurrence and demanded the said *chanda* and they gave them an amount of Taka 20,500/=. None of them are present here. This witness also deposed that he made statement to the Magistrate and he identified his statement and signature on it. The defence declined to cross examine him.

26. P.W.No.7 Fida Hasan Khan, in his deposition deposed that the occurrence took place on 24.07.1994, at Devog Banglabazar Government primary School. This witness deposed that on the date of alleged occurrence they were constructing the roof of the said school, at that time, 10/12 accused persons came to the place of occurrence and demanded *chanda* (subscription) otherwise, they will stop the construction work. The terrorists demanded an amount of Taka 50,000/- as *chanda* and they compelled to pay an amount of Taka 20,500/= to the terrorist. This witness also deposed that on that day, the accused Zakir Khan, Shipon, Morshed, Farid and other came to the place of occurrence and demanded the said *chanda* (subscription) and they gave an amount of Taka 20,500/- to the terrorist. This witness also admitted that the accused persons are not known to him previously. He did not identify the accused on dock. He deposed that he made statement to the Magistrate and he identified his signature on it. During cross examination this witness deposed that the statement made before the Magistrate is similar to the testimony made in this case.

27. P.W.No. 8 Inspector Md. Sirajul Islam is the Investigating Officer of this case, deposed that on the alleged date and time of occurrence, he was working as Officer-in-Charge of the Fatullah Police Station. He filled up the FIR Form and identified his signatures on it, these are marked as exhibits- 6, 6(1) and 6(2) respectively. During investigation he visited the place of occurrence, prepared the sketch map with separate index. On conclusion of the investigation and finding *prima facie* case against the accused persons, he submitted the charge sheet being No. 92 dated 10.09.1994. He identified the sketch map, which marked as exhibit-7 and his signature on it marked as exhibit-7/1. He identified the index, which marked as exhibit -8 and his signature on it marked as exhibit 8/1.

28. During cross examination this witness deposed that there are houses in the neighbouring area to the place of occurrence. He denied the suggestion that he did not examine any witness of the neighbouring area and he recorded the statement of the witnesses of prosecution side only and submitted the charge sheet against the accused persons and he did not examine any person from the Ujir Ali High School, which situated beside the said primary school.

29. These are all the evidence available on record.

30. We have carefully considered the submissions of the learned Advocates appeared on both the sides, scrutinized the impugned judgment and order of conviction and sentence and evidence on record. We have categorically considered the depositions of all the prosecution witnesses. In the instant case, we find that the learned Judge convicted and sentenced the appellants on the basis of the evidence adduced by the Prosecution witness Nos. 2, 5, 6, 7 and 8.

31. The learned Advocates for the Appellants argued that whether or not all the prosecution witnesses are interested witnesses and the Prosecution witness Nos. 2, 4, 5, 6 and

7 are partners of the firm namely, M/S. Kabir Construction Ltd. and judgment and order of conviction and sentence passed by the trial Court against these appellants on the basis of the evidence of interested, inter-related and partisan witnesses is sustainable in law. The evidence of interested, inter-related and partisan witnesses must be closely scrutinized before it is accepted. We find support of this contention in the case of *Nawabul Alam and ors. Vs. The State, 15 BLD (AD) 61* wherein it is held:

*“The principle that is to be followed is that the evidence of persons falling in the category of interested, interrelated and partisan witnesses, must be closely and critically scrutinized. They should not be accepted on their face value. Their evidence cannot be rejected outright simply because they are interested witnesses for that will result in a failure of justice, but their evidence is liable to be scrutinized with more care and caution than is necessary in the case of disinterested and unrelated witnesses. An interested witness is one who has a motive for falsely implicating an accused person and that is the reason why his evidence is initially suspect. His evidence has to cross the hurdle of critical appreciation. As his evidence cannot be thrown out mechanically because of his interestedness, so his evidence cannot be accepted mechanically without a critical examination. As Hamoodur Rahman, J. (as his Lordship then was) observed in the case of *Ali Ahmed vs. State (14 DLR (SC) 81*):*

“Prudence, of Course, requires that the evidence of an interested witness should be scrutinized with care and conviction should not be based upon such evidence alone unless the Court can place implicit reliance thereon” (Para -10).

*.....The rule that, the evidence of interested witnesses requires corroboration is not an inflexible one it is a rule of caution rather than an ordinary rule of appreciation of evidence. The Supreme Court of Pakistan spelt out the rule in the case of *Nazir Vs. The State, 14 DLR (SC) 159*, as follows:*

“.....we had no intention of laying down an inflexible rule that the statement of an interested witness (by which expression is meant a witness who has a motive for falsely implicating an accused person) can never be accepted without corroboration. There may be an interested witness whom the Court regards as incapable of falsely, implicating an innocent person. But he will be an exceptional witness and, so far as an ordinary interested witness is concerned, it cannot be said that it is safe to rely upon his testimony in respect of every person against whom he deposes. In order, therefore, to be satisfied that no innocent persons are being implicated alongwith the guilty the Court will in the case of an ordinary interested witness look for some circumstances that gives sufficient support to his statement so as to create that degree of probability which can be made the basis of conviction. That is what is meant by saying that the statement of an interested witness ordinarily needs corroboration.

.....The High court Division was obviously in the wrong in holding that no corroboration was necessary in this case. It failed to scrutinize the evidence of interested eye- witnesses and totally ignored the fact that the evidence of P.Ws. 3-5 having so many infirmities is by itself insufficient and unsafe to sustain any conviction on a capital charge and requires corroboration by either circumstantial or ocular corroborative evidence.”

32. We have perused the deposition of prosecution witnesses, wherefrom it transpires that the P.W. No. 1 is the Magistrate, P.W. No. 3 is the headmaster of the school and P.W. No.8 is the investigating officer of the case. The prosecution witness Nos. 2, 4, 5, 6 and 7 are partners of the firm namely, M/S. Kabir Construction Ltd. The prosecution witness Nos. 2, 5, 6 and 7 deposed in one voice and categorically stated that on 24.07.1994 at about 3.00 p.m. these

appellants alongwith 10/12 persons being armed with deadly weapons i.e. pistol, Kata rifle and pipe gun etc. came to the place of occurrence, where the informant and his partners were carried on their construction work. They came to the place of occurrence, stopped the construction work and demanded an amount of Taka 50,000/= and in doing so they also assaulted the some of the labours at the construction side and put them in fear of death, at this stage, they gave an amount of Taka 20,500/= to these terrorists. Thereafter, they informed the incident to the local administration and on 26.07.1994, the informant lodged this First Information Report to the Fatullah Police Station. On conclusion of taking evidence the learned Tribunal Judge convicted and sentenced the appellants. They narrated the incident in one voice that on the alleged date, time and place of occurrence these appellants committed the said offence, which attracts the provision of under Section 4 of the Shantrash Mulak Aparadh Daman Ain, 1992. They witnessed the incident and they have given consistent statements as to how the alleged occurrence took place. P.W. No. 3 the headmaster of the school and the P.W. No. 4 Sharif Hossain Bhuiyan a partner of the informant, though they were declared hostile by the prosecution but these witnesses indirectly supported the prosecution case. There is no reason why the evidence of the business partners should be discarded simply because they belonged to a construction firm. They came before the Court and testified to the occurrence. They were fully cross-examined by the defence. Their evidence is also evidence with the meaning of Section 3 of the Evidence Act. The prosecution witness Nos. 2, 4, 6 and 7 are material witnesses though they are business partners of the P.W. No. 5, the informant but cannot be considered as interested witness. There is no reason that the testimony of P.W. Nos. 2, 4, 5, 6 and 7 can be discarded or liable to be flung to the wind simply because they happened to be business partners.

33. The learned advocate for the appellants argued that there are some discrepancies in the evidence of the prosecution witnesses. He refers to the Prosecution witnesses Nos. 2, 5, 6 and 7, who are claim to be eye witness of the alleged occurrence but they made contradictory statement relating to the time, place and manner of the occurrence and they failed to corroborate each other on these material points. The learned Advocate for the appellants submits that its cast serious doubt about the credibility of the whole prosecution case. We find that these discrepancies do not amount to contradictions. Minor discrepancies are not materials that occur due to individual difference, where minor discrepancies, not going to the root of the matter or on the material point, these are found in the evidence of natural and probable witness, these discrepancies should not be over emphasized. Further, the decisions cited by the learned advocate for the appellants are not relevant to the facts and circumstances of this case. There is no discrepancy and contradiction in the evidence of prosecution witnesses. As such, we find that the learned Judge of the Shantrash Mulak Aparadh Daman Tribunal, Narayanganj rightly convicted these appellants.

34. Lastly, the learned Advocate for the appellants prays for reduction of the sentence, in consideration of the facts and circumstances of the case. He argued that although at the time of alleged occurrence the appellants were aged about 25-30 years old and the case was lodged in the year 1994 by this time 25 years have been elapsed and the accused persons are on their fifties to sixties now. Further, on the alleged date of occurrence, they did not seriously assaulted any person at the place of occurrence. He further submits that the sentence is severe and harsh. As such, he prays for reduction of their sentence. We have considered the submission made by the learned Advocate for the appellants. Record indicated that they are not habitual offenders and they cannot be at all characterized to be a menace to the society. We are of the view that justice will be better served if we reduce the sentence of the appellants.

35. **In the result, this appeal is dismissed with modification of sentence** and the appellants 1. Zakir Khan, 2. Farid, 3. Shipon and 4. Benjir Murshed Mridha are convicted under Section 4 of the Shantrash Mulak Aparadh Daman Ain, 1992 and the sentence is reduced from 14 (fourteen) years to 8 (eight) years and to pay fine of Taka 20,000/- each in default to suffer rigorous imprisonment for 2 (two) years more. The appellants are entitled to get the benefit as provided under Sub-Section (1) of Section 35 A of the Code of Criminal Procedure. The appellants are directed to surrender before the Shantrash Mulak Aparadh Daman Tribunal, Narayangonj within 30 (thirty) days from the date of receipt of this order failing which the learned Judge of the said Tribunal secure their arrest as per law.

36. Send down the lower courts records along with copy of the judgment and order to the court concern at once.